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In Pursuit of Excellence—A History of the University of Minnesota Law School

Part VI: The Auerbach Years—A Time of Building, Controversy, and Frustration, 1972-1979†

Robert A. Stein*

When William B. Lockhart resigned from the deanship of the University of Minnesota Law School in June 1972, a productive sixteen-year tenure came to an end. Guided in the early years by the recommendations of the 1955 Law School Self-Survey, Lockhart and his faculty achieved significant success in improving the school's relationship with the bar, in revitalizing the educational program, in improving the quality of the student body, and in maintaining the quality of the faculty. In the later years of his tenure, the law school successfully responded, under Lockhart's leadership, to a variety of challenges presented in the turbulence of the late 1960s. By developing programs to equalize the opportunities for legal education, by implementing policies that increased student participation in the governance of the school, and by trying to accommodate the dramatic increase in the demand for legal education, the law school responded to the needs of its community without sacrificing its tradition of excellence. By the conclusion of Dean Lockhart's administration, however, many of the school's achievements and its potential had become imperiled by an inadequate physical facility and by the frustrating slowness of the process of obtaining an appropriation

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The first five articles in this series described the development of the University of Minnesota Law School under Deans William S. Pattee, William Reynolds Vance, Everett Fraser, Maynard E. Pirsig, and William B. Lockhart. See Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part I: The Pattee Years—A Time of Accommodation*, 62 MINN. L. REV. 485 (1978); Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part II: The Vance Years—A Time of Ascendancy*, 62 MINN. L. REV. 857 (1978); Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part III: The Fraser Years—A Time of Excellence and Innovation*, 62 MINN. L. REV. 1161 (1978); Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part IV: The Pirsig Years—A Time of Transition, 1948-1955*, 63 MINN. L. REV. 299 (1979); Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part V: The Lockhart Years—A Time of Achievement and Challenge, 1956-1972*, 63 MINN. L. REV. 809 (1979).

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for a new building. It was to these tasks—securing a new law building and implementing the educational program for which it was designed—that the seven-year administration of the school's sixth dean, Carl A. Auerbach, was dedicated. When the new law school building became a reality in 1978, Dean Auerbach's principal goal was achieved and the law school was well positioned to continue its pursuit of excellence.

By the time of Dean Lockhart's resignation, three traits—significant achievements in legal scholarship, a demonstrated concern for the quality of legal education, and an ability to be a leader in professional and civic activities—had become traditional prerequisites for the deanship of the University of Minnesota Law School. By 1972, however, it had become clear that the next dean would also have to be capable of leading the drive for a new law building through a University central administration faced with a multitude of meritorious competing demands and an openly skeptical legislature. If, as was asserted by the departing Dean Lockhart, "[t]he state must necessarily conduct a holding action in legal education"¹ until a new building became available, then, whatever other objectives the new dean might have, his first priority was rigidly foreordained.

It was in this context that the search for a new dean began in early 1972. Under the leadership of Regents' Professor Paul E. Meehl of the Psychology faculty, a search committee of six law professors and two law students began to gather nominations and discuss selections with a joint bar-alumni advisory committee.² The task was not to be an easy one. Sixteen years earlier, at the time of Dean Lockhart's selection, it was noted that searches outside of the school were often frustrated because candidates fitting Minnesota's traditional criteria³ were "almost invariably well established, successful and happy in their current positions and could not easily be induced to make a change."³ The inducement was that much more difficult in

1. Dean William B. Lockhart and the Law School Building Committee, Summary of the Need and the Planning for the New Law School Building at the University of Minnesota (Nov. 1, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

2. The Search Committee consisted of Professors Paul E. Meehl (Chairman), Edward H. Cooper (Vice Chairman), John J. Cound, David L. Graven, Donald G. Marshall, Allan H. McCoid, and Leo J. Raskind. Student members included Daryl L. Nelson and Daniel L. Parsons, both of the class of 1972. The Bar-Alumni Committee included the Honorable Walter F. Rogosheske, Julius E. Davis, Gerald E. Magnuson, William E. Drake, Richard E. Kyle, Jr., Frank E. Claybourne, Greer E. Lockhart, and Robert J. King. See *Committee Begins Search for New Dean*, U. MINN. L. ALUMNI NEWS, Winter 1971, at 8.

3. *Search for New Dean Continues*, U. MINN. L. SCH. NEWS, Apr. 1956, at 1.

1972, given the burdensome task of securing a new building. Candidates with successful positions elsewhere could not easily be persuaded to undertake such a troublesome assignment in a political environment with which they were unfamiliar. Consequently, it is not surprising that the search committee's work was not quickly or easily completed.

For over two years, through various reorganizations and renewals,⁴ the search continued. When Dean Lockhart stepped down in July 1972, the University of Minnesota Board of Regents appointed Professor Carl A. Auerbach as Acting Dean for the 1972-1973 academic year.⁵ Eight months later, on March 9, 1973, the Regents made Auerbach's appointment permanent.⁶

A. THE DEAN

1. Background

Carl Auerbach was born in 1915, the son of a New York carpenter. Raised in New York, Auerbach was approaching maturity as the Depression engulfed the country. While that cataclysmic event was to have a significant impact on almost every American life, its effects were particularly telling on the career of Dean Auerbach. Affecting both his choice of undergraduate schools and of careers, the Depression even more importantly left an indelible mark on his political philosophy.

Living in the financial capital of the world, Carl Auerbach first experienced the tragedy of the Depression when the father of a friend jumped to his death from a Wall Street office window in the panic following the market's 1929 crash.⁷ Later, the Depression intervened more directly when the layoff of his own father quashed Auerbach's plans to attend Cornell University and forced him to study closer to home, at Long Island University in New York. Majoring in history and economics, Auerbach graduated in 1935 at the age of nineteen.⁸ Once again, the dictates of the Depression directed the course of his life, inducing him to forsake his ambition to become a historian in favor of the economic security of practicing a profession. As law

4. See *Dean Search Continues*, U. MINN. L. ALUMNI NEWS, Winter 1973, at 15; *Professor Auerbach to Serve as Acting Dean*, U. MINN. L. ALUMNI NEWS, Summer 1972, at 5.

5. See *Professor Auerbach to Serve as Acting Dean*, *supra* note 4.

6. See *Auerbach Named Law School Dean*, U. MINN. L. ALUMNI NEWS, Summer 1973, at 5.

7. Interviews with Carl A. Auerbach, Dean of the University of Minnesota Law School, in Minneapolis, Minnesota (Apr. 3, 1979; Jan. 12, 1979; Aug. 21, 1978) [hereinafter cited as Auerbach Interviews].

8. *Id.*

seemed to be the discipline most closely related to his historical interests, he settled upon law school as his next step. Three years later, in 1938, he graduated from the Harvard Law School.⁹

The study of law was unusually exciting during the period between 1935 and 1938, given the dramatic interplay between the United States Supreme Court and President Roosevelt's New Deal. The conflict between "new" and "classic" liberalism played out in those years was apparently of great significance to the emerging political perspective of Carl Auerbach. A review of his subsequent works and writings indicates that it is difficult to conceive of a more prototypical "new" liberal. Undoubtedly, Auerbach's political and social ideals were a factor in shaping his early vocational choices.

Auerbach's first law job was in private law practice as an associate in a Washington, D.C., law firm.¹⁰ However, a call from his former Harvard professor, Calvert Magruder, soon lured him into public service. Magruder, who had recently been appointed General Counsel of the Wage and Hour Division of the Department of Labor (and was soon to begin a twenty-year tenure as a United States Circuit Judge), convinced Auerbach that a greater opportunity for public service could be found in government work than in private practice.¹¹ Consequently, Auerbach, to the unsurprising displeasure of his employers, left his job of only two months and assumed a new position in the Department of Labor. Two years later, in 1940, Auerbach moved to the National Defense Commission and, eventually, the Office of Price Administration (OPA), where he served as Assistant General Counsel until World War II interrupted his work in 1943.¹²

Drafted into the Army, Auerbach was attached to the Office of Strategic Services in London, England, and to the Allied Control Council in Berlin during the last two years of the war. Entering as a private, he emerged from military service in February 1946, as a first lieutenant.¹³ Upon his discharge, Auerbach returned to Washington where he assumed in quick succession the positions of Associate General Counsel of the Office of Economic Stabilization, Associate General Counsel of the OPA, and finally, General Counsel of the OPA. Auerbach assisted these two agencies as they grappled, first, with the monumental economic dislocation wrought by five years of war, and second, with their own dismantlement.

As this latter task was drawing to a close in 1947, Auerbach, having seen to it that the 200 attorneys in his charge had found other

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

positions, began to wonder what his own next step might be. It was then that he received an unexpected call from Professor J. Willard Hurst of the University of Wisconsin Law School, inviting him to consider teaching at that school.¹⁴ Though he had never before thought seriously about teaching as a career, Auerbach, complimented by the Hurst call and without firm personal plans, decided to give it a try.¹⁵ Thus, he began an academic career that has spanned more than thirty years.

The results of his extended experience in regulatory agencies in Washington, D.C., however, were an enduring interest in administrative law, a strong belief in the potentials and responsibilities of active government involvement in the nation's economy, and a respect for government service as a means of serving the public interest.¹⁶ These attributes, coupled with his Democratic liberalism, were the foundation and motivation for much of his subsequent thoughts and writings.

Before turning to an analysis of Dean Auerbach's writings, a brief summary of his academic career will help to place this work in perspective. For fourteen years, from 1947 to 1961, Auerbach served on the Wisconsin Law School faculty and established himself as a leading scholar in administrative and constitutional law. Two research leaves, the first as a Fulbright Advanced Research Award winner at the London School of Economics and Political Science (1953-1954), the second as a Fellow in the Center for Advanced Study of the Behavioral Sciences at Stanford University (1958-1959),¹⁷ al-

14. *Id.* Auerbach had met Professor Hurst when the latter had come to Washington, D.C., to serve as an attorney for the Board of Economic Warfare during World War II. *Id.*

15. *Id.* A demonstration of Dean Auerbach's naiveté in matters academic was that he did not realize the compliment he was given when the position offered was tenured. *Id.*

16. Years later, when Ralph Nader was encouraging public-minded young lawyers to seek careers as independent watchdogs on both industry and government, Auerbach responded with a strong defense of government service:

[The "public interest" aspect of government agency work] makes it difficult to comprehend why Mr. Nader sees government as a hostile force to be combated by the "public interest" lawyer. Why should not young lawyers seeking to champion the public interest enter government service . . . ? True, many local and state governments pay miserably and federal pay does not compare with what can be earned in the big firms. But then government service should have the extra attraction of holding out the opportunity for self-sacrifice. I hope Mr. Nader will not discourage young men and women from seizing this opportunity.

Auerbach, *Some Comments on Mr. Nader's Views*, 54 MINN. L. REV. 503, 507 (1970).

17. See ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS, 1978-79, at 139 (1979) [hereinafter cited as 1978-79 DIRECTORY].

lowed Auerbach to deepen his understanding of the social sciences and their relationships to the legal world. As he was advancing his reputation as a scholar, Auerbach's involvement in the Americans for Democratic Action (which he helped to found)¹⁸ and in the Democratic Party, along with a good deal of quasi-political writing, provided an outlet for his political interests.

At about the same time that Auerbach ascended to a position of prominence as a leading member of the University of Wisconsin Law School faculty, a professor on the University of Minnesota Law School faculty was also rising to eminence. In fact, Professor Kenneth Culp Davis, who like Auerbach achieved distinction in the field of administrative law, had received such acclaim that the University of Chicago Law School successfully sought him to fill a new faculty chair designed to attract "the outstanding legal scholar in the nation."¹⁹ As a consequence, Minnesota was left with a need for a mature scholar on its faculty. In looking for Davis' successor, the Procurement Committee noted that "we cannot hope to 'replace' Kenneth but only to find another distinguished scholar who may encourage and inspire us as Kenneth has done."²⁰

The availability of this position came at an opportune moment for Professor Auerbach. Not only was he attracted to Minnesota by its general reputation and by his personal knowledge of Dean Lockhart, gained while they were students together at Harvard, but Auerbach was also somewhat disenchanted with Wisconsin, partly with its law school administration and partly with the general political climate of the state. Bitter over Hubert Humphrey's loss in the 1960 Wisconsin presidential primary, Auerbach was interested in finding a more congenial political home.²¹ After a visit to Minnesota with which both sides were well satisfied,²² Auerbach received and accepted an offer, and joined the Minnesota faculty in 1961.²³

18. Auerbach Interviews, *supra* note 7.

19. Interview with William B. Lockhart, former Dean of the University of Minnesota Law School, in Ely, Minnesota (Aug. 27, 1978) [hereinafter cited as Lockhart Interview]. See also Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part V: The Lockhart Years—A Time of Achievement and Challenge, 1956-1972*, 63 MINN. L. REV. 809, 864 & n.261 (1979) [hereinafter cited as Stein, *The Lockhart Years*].

20. Procurement Committee Report (Feb. 22, 1961), *appended to Minutes of the University of Minnesota Law School Faculty* (Feb. 22, 1961). See Stein, *The Lockhart Years*, *supra* note 19, at 864.

21. Auerbach Interviews, *supra* note 7.

22. After the faculty unanimously approved the offer of an appointment to Professor Auerbach, it was recorded that "enthusiasm for Professor Auerbach as a member of the faculty ran very high." Minutes of the University of Minnesota Law School Faculty (Apr. 14, 1961).

23. Curiously, the Davis/Auerbach switch at Minnesota was part of a three-

2. Scholarship

During Auerbach's thirteen-year tenure at Wisconsin and his subsequent seventeen years on the Minnesota faculty, he distinguished himself as an unusually prolific and diversified writer. Within the realm of traditional legal scholarship, he produced a number of articles in the areas of administrative law,²⁴ civil rights,²⁵ constitutional law,²⁶ legal education,²⁷ law and the social sciences,²⁸ and a variety of other topics.²⁹ He coauthored two books, *The Federal*

school shuffle. Professor and former Dean Wilbur G. Katz of Chicago replaced Auerbach at Wisconsin. Auerbach Interviews, *supra* note 7.

24. See Auerbach, *Administrative Rulemaking in Minnesota*, 63 MINN. L. REV. 151 (1979); Auerbach, *Informal Rulemaking: A Proposed Relationship Between Administrative Procedures and Judicial Review*, 72 NW. U.L. REV. 15 (1977); Auerbach, *Pluralism and the Administrative Process*, 400 ANNALS 1 (1972); Auerbach, *Scope of the Authority of Federal Administrative Agencies to Delegate Decision Making to Hearing Examiners*, 48 MINN. L. REV. 823 (1964); Auerbach, *The Federal Trade Commission: Internal Organization and Procedure*, 48 MINN. L. REV. 383 (1964); Auerbach, *Administered Prices and the Concentration of Economic Power*, 47 MINN. L. REV. 139 (1962); Auerbach, *Some Thoughts on the Hector Memorandum*, 1960 WIS. L. REV. 516; Auerbach, *Should Administrative Agencies Perform Adjudicatory Functions?*, 1959 WIS. L. REV. 95.

25. See Auerbach, *The 1969 Amendments to the Minnesota State Act Against Discrimination and the Uniform Law Commissioners' Model Anti-Discrimination Act: A Comparative Analysis and Evaluation*, 55 MINN. L. REV. 259 (1970); Auerbach, *The 1967 Amendments to the Minnesota State Act Against Discrimination and the Uniform State Law Commissioners' Model Anti-Discrimination Act: A Comparative Analysis and Evaluation*, 53 MINN. L. REV. 231 (1967). See also Notre Dame Conference on Federal Civil Rights Legislation and Administration: A Report, 41 NOTRE DAME LAW. 906 (1966). (Auerbach prepared the background paper for Article III of the report, *The Federal Civil Rights Organization and Administration*. *Id.* at 921.)

26. See Auerbach, *Proposal II and the National Interest in State Legislative Apportionment*, 39 NOTRE DAME LAW. 628 (1964); Auerbach, *The Reapportionment Cases: One Person, One Vote—One Vote, One Value*, 1964 SUP. CT. REV. 1; Auerbach, *The Communist Control Act of 1954: A Proposed Legal-Political Theory of Free Speech*, 23 U. CHI. L. REV. 173 (1956).

27. See Auerbach, *The Education of the Trial Lawyer: What Should the Law School Do?*, 34 BENCH & B. MINN. 19 (Jan. 1978); Auerbach, *University of Minnesota Law School and the Practicing Bar*, 30 BENCH & B. MINN. 9 (Mar. 1974); Auerbach, *Perspective: Division of Labor in the Law Schools and Education of Law Teachers*, 23 J. LEGAL EDUC. 251 (1971); Auerbach, *Some Comments on Mr. Nader's Views*, *supra* note 16.

28. See Auerbach, *Legal Development in Developing Countries: The American Experience*, 63rd PROC. AM. SOC'Y INT'L L. 81 (1969); Auerbach, *Issues of Legal Policy in Social Science Perspective*, 2 LAW & SOC'Y REV. 499 (1968); Auerbach, *Legal Tasks for the Sociologist*, 1 LAW & SOC'Y REV. 91 (1966); Auerbach, *Law and Social Change in the United States*, 6 U.C.L.A. L. REV. 516 (1959); Auerbach, Book Review (J. Stone, *Social Dimensions of Law and Justice*), 5 SYDNEY L. REV. 434 (1967).

29. See, e.g., Auerbach, *Some Comments on the Case for the House Un-American Activities Committee*, 47 MINN. L. REV. 593 (1963); Auerbach, *The Isbrandt-*

*Regulation of Transportation—Materials Illustrating Problems of Public Utility Control*³⁰ and *The Legal Process—An Introduction to Decision-Making by Judicial, Legislative, Executive and Administrative Agencies*,³¹ and he contributed chapters to the books of others.³² While the diversity of these writings alone demonstrates the unusually wide focus of his scholarship, Auerbach's many contributions to nonlegal periodicals further illustrate the depth of his energy and the breadth of his interests. Particularly during the 1950s, Auerbach offered through these quasi-popular writings a legal-political perspective on the issues of the day.³³ Carried by such liberal publications

sen Case and Its Aftermath: The Dual Rate System in International Shipping (Pts. I-II), 1959 WIS. L. REV. 223, 369; Auerbach, *On Professor H.L.A. Hart's Definition and Theory of Jurisprudence*, 9 J. LEGAL EDUC. 39 (1956); Auerbach, *Regulation of Motor Carriers in Wisconsin*, (Pts. I-II) 1951 WIS. L. REV. 5, 229; Auerbach, *Quality Standards, Informative Labeling and Grade Labeling as Guides to Consumer Buying*, 14 LAW & CONTEMP. PROBS. 362 (1949).

30. Coauthored with Nathaniel L. Nathanson and published by West Publishing Company, St. Paul (1953).

31. This volume is a 1961 revision by Auerbach and Samuel Mermin of a book first produced by Lloyd K. Garrison and Willard Hurst in 1941 under the title *LAW IN SOCIETY*, published by Chandler Publishing Company, San Francisco.

32. See Auerbach, *Freedom of Movement in International Law and United States Policy*, in *HUMAN MIGRATION* (1978); Auerbach, *An International Legal-Political Framework for Exploring and Exploiting the Mineral Resources Underlying the High Seas: The Recommendations of the Commission on Marine Science, Engineering and Resources*, in *OCEAN RESOURCES AND PUBLIC POLICY* (T. English ed. 1973); Auerbach, *The Supreme Court and Reapportionment*, in *REAPPORTIONMENT IN THE 1970's* (N. Polsby ed. 1971).

33. See Auerbach, *Student Loyalty—Should it be Questioned? No: Carl A. Auerbach*, *THE NEW LEADER*, Feb. 1, 1960, at 17; Auerbach, *How Congress Can Speed Integration*, *THE NEW LEADER*, Dec. 22, 1958, at 8; Auerbach, *Little Rock and the Law*, *THE NEW LEADER*, Sept. 30, 1957, at 8; Auerbach, *It is Strong Enough to Do the Job—An Analysis of the Civil Rights Act of 1957*, *THE REPORTER*, Sept. 5, 1957, at 13; Auerbach, *Jury Trials and Civil Rights*, *THE NEW LEADER*, Apr. 29, 1957, at 16; Auerbach, *American Capitalism and Democracy*, *THE LISTENER*, Aug. 5, 1954, at 195.

In addition to articles, Auerbach also contributed a number of book reviews, five for *The Progressive* and four for *The New Leader*: Auerbach, Book Review (I. Deutscher, *The Prophet Unarmed, Trotsky 1923-1929*), *THE PROGRESSIVE*, Dec. 1959, at 50; Auerbach, Book Review (J. Stone, *Aggression and World Order*), *THE NEW LEADER*, June 15, 1959, at 18; Auerbach, Book Review (S. Hook, *Political Power and Personal Freedom*), *THE NEW LEADER*, Sept. 28, 1959, at 21; Auerbach, Book Review (J. Galbraith, *The Affluent Society*), *THE PROGRESSIVE*, Aug. 1958, at 25; Auerbach, Book Review (S. Hook, *Common Sense and the Fifth Amendment*), *THE NEW LEADER*, June 20, 1957, at 22; Auerbach, Book Review (F. Sutton, S. Harris, C. Kaysen & J. Toblin, *The American Business Creed*), *THE NEW LEADER*, Nov. 5, 1956, at 17; Auerbach, Book Review (F. Steinberg, *Capitalism and Socialism on Trial*), *THE PROGRESSIVE*, Apr. 1952, at 36; Auerbach, Book Review (H. Girvetz, *The Evolution of Liberalism*), *THE PROGRESSIVE*, May 1951, at 34; Auerbach, Book Review (I. Ross, *Strategy for Liberals: The Politics of a Mixed Economy*), *THE PROGRESSIVE*, Aug. 1949, at 28.

as *The New Leader* and *The Progressive*, these writings, together with Auerbach's more traditional works of legal scholarship, provide an insight into the man who became the University of Minnesota Law School's sixth dean.

a. A Political Orientation

A review of Dean Auerbach's writings clearly reveals his strong political orientation. Many writers in the legal-academic community are content to focus upon issues of substantive legal consequence but of little political interest. Not Dean Auerbach. He seems always to have kept in mind the principle that law is an instrument of practical application, capable of shaping the social order toward a desired end.³⁴ For Dean Auerbach, moreover, the end to be desired was that represented by the stream of American liberal thought from the New Deal to the War on Poverty. A founder of Americans for Democratic Action (ADA)³⁵ and a lifetime "Humphrey" liberal, Auerbach was an active participant in the refinement of America's post-war liberalism. Writing from this political persuasion, Auerbach sought to fulfill Sidney Hooks' belief (which Auerbach underscored in a book review) that "the social function of the intellectual is 'to think and to act in such a way that the results of his thinking are brought to bear upon the great issues of our time.'"³⁶

Perhaps the best example of Auerbach's success in this role is his article, *Jury Trials and Civil Rights*, published in the *New Leader* on April 29, 1957.³⁷ That article, which offered a new approach to problems then developing in the legislative consideration of civil rights legislation, is credited by some observers with supplying the formula for compromise that allowed the passage of the Civil Rights Act of 1957.³⁸ While this article offers a dramatic illustration of the impact

34. See generally Auerbach, Book Review (J. Stone, *Social Dimensions of Law and Justice*), *supra* note 28.

35. Auerbach Interviews, *supra* note 7.

36. Auerbach, Book Review (S. Hook, *Political Power and Personal Freedom*), *supra* note 33, at 23.

37. See Auerbach, *Jury Trials and Civil Rights*, *supra* note 33.

38. At the time of publication of the Auerbach article, Congress was considering legislation authorizing the Attorney General to bring suits enjoining interference with civil rights. However, a split had developed among pro-civil-rights forces over whether alleged violators of injunctions issued under the Act were to be afforded a trial by jury. Many feared that, as a practical matter, a jury trial guarantee would reduce the effectiveness of the law by making enforcement in the South much more difficult. On the other hand, labor leaders were reluctant to endorse any proposal without a jury trial requirement for fear that this precedent might later be used to strip the labor laws of their jury trial protection.

In his article, Auerbach argued that this split in the ranks was unnecessary, largely because discussion until that time had ignored the potential use of civil, as opposed

of Auerbach's writing on the great issues of our time, it is not unique. Indeed, much of his writing addresses political as well as legal issues and appears to have been intended to advance a readily identifiable political perspective. Even law review articles, such as his work defending the constitutionality of the Communist Control Act of 1954,³⁹ fit this pattern. Given Auerbach's close political affiliation with that Act's sponsor, Senator Hubert H. Humphrey, and the importance of the Act in demonstrating to a concerned public that the country's liberals were not "soft" on communism, Auerbach's defense of the Act can be viewed in a political perspective.⁴⁰ In this, as in many other instances, Auerbach used his skills of legal analysis to advance social and political goals, making him one of the most overtly political of Minnesota's deans.

b. An Adversarial Approach

A second and perhaps related trait reflected in Auerbach's writing is his readiness to engage in adversarial discourses. A number of Auerbach's shorter works have been responses to and critiques of the writings of others. Auerbach has, for example, responded to Ralph Nader's criticism of law schools;⁴¹ William F. Buckley, Jr.'s analysis of the House Un-American Activities Committee;⁴² Theodore J.

to criminal, contempt proceedings. A civil contempt proceeding, being "remedial" rather than punitive in nature, is always before a judge, not a jury. Consequently, Auerbach suggested, pro-civil-rights forces could compromise by requiring a jury trial in the criminal contempt proceedings without losing the law's effectiveness, which could be ensured by liberal use of the civil contempt proceedings.

Reportedly, Auerbach's article came to the attention of legislative drafters on Capitol Hill and was incorporated into a compromise amendment that smoothed the way for the passage of the Civil Rights Act of 1957. See Carter, *How the Senate Passed the Civil Rights Bill*, THE REPORTER, Sept. 5, 1957, at 9, 11.

39. See Auerbach, *The Communist Control Act of 1954: A Proposed Legal-Political Theory of Free Speech*, *supra* note 26.

40. See Auerbach, *The Communist Control Act of 1954*, *supra* note 26. Interpretations of the intent and effect of this article have differed. In a 1978 article, Max Kampelman concluded that the article offered strong support for "the philosophy and purpose of the Humphrey legislative effort." Kampelman, *Hubert H. Humphrey: Political Scientist*, PS, Spring 1978, at 228, 235. Dean Auerbach took issue with that interpretation in a subsequent letter to the editor of the journal in which the Kampelman article appeared, pointing out that he thought the Communist Control Act was unwise legislation. See Auerbach, *Letter to the Editor*, PS, Summer 1978, at 452. In an accompanying letter, Kampelman defended his interpretation. See Kampelman, *Letter to the Editor*, PS, Summer 1978, at 452.

41. See Auerbach, *Some Comments on Mr. Nader's Views*, *supra* note 16.

42. See Auerbach, *Some Comments on the Case for the House Un-American Activities Committee*, *supra* note 29.

Lowi's criticism of the administrative process;⁴³ Laurence Silberman's critique of lawyering in democratic capitalism;⁴⁴ and Professor J.H. Skolnick's suggestions for studies in sociology and the law.⁴⁵ Auerbach's responsive writings often carry the sharply critical tone of an opposing brief, drawing attention to weaknesses in the opponent's position. Auerbach's participation in these pointed debates, which are not uncommon in scholarly journals, demonstrates his commitment to intellectual integrity as well as his willingness to be adversarial. This commitment and this willingness also became hallmarks of his administrative style.⁴⁶

c. An Emphasis on Social Sciences and the Law

The prodigious volume of Auerbach's writing also demonstrates an overwhelming concern with the need for a closer relationship between law and the social sciences. Time and time again he has called upon lawyers to use social science doctrine and methodology to understand the way the law functions in our society. At the same time, Auerbach has urged social scientists to address questions of law in a way that would permit their research to be put to practical use by lawmakers:

The call for studies of the social impact of particular judicial, legislative, administrative and executive rules, decisions and practices is sounded sporadically and acted upon but rarely. To read the recent decisions of the Supreme Court of the United States overruling established precedents in many areas of constitutional law is to catalog a long list of missed opportunities for social scientists.⁴⁷

This emphasis on the potential for interdisciplinary cooperation between law and the social sciences is in strong contrast with the "natural law" philosophy of the law school's first dean, and demonstrates how thinking about the sources and ends of law has changed in the last century.⁴⁸

43. See, Auerbach, *Pluralism and the Administrative Process*, *supra* note 24.

44. See Auerbach, *Letter to the Editor*, REGULATION, Oct. 1978, at 3.

45. See Auerbach, *Legal Tasks for the Sociologist*, *supra* note 28.

46. See text accompanying note 451 *infra*.

47. Auerbach, *Issues of Legal Policy in Social Science Perspective*, *supra* note 28, at 499.

48. In 1888, when Dean William S. Pattee gave his inaugural address as Dean of the new law department of the University of Minnesota, he, like most jurisprudential scholars of his day, thought that the task of lawmakers was the discovery of the natural law. This natural law, which already existed in the universe, could and should become the law of men. As Pattee explained in his inaugural address, "[T]here is in human affairs one order, which is best. That order is not always the one which exists but it is the order which should exist, for the greatest good of humanity. God knows it and wills it. Man's duty is to discover and establish it." *Opening Address of Pro-*

fessor Pattee, 12 ARIEL (University of Minnesota) 7, 11 (1888) (quoting unknown sources). Discovering natural law was essentially an exercise in philosophy and theology. Once divined, the law was considered more an immutable principle (as in the natural sciences) than a temporal tool of political and social movement.

However, concepts of law had undergone a radical transition in the 90 years following Dean Pattee's inaugural address. As early as 1908, Dean Roscoe Pound laid the groundwork for the transition by advancing the position that law must be judged by the results it achieves, not by the niceties of its internal structure; it must be valued by the extent to which it meets its end, not by the beauty of its logical processes or the strictness with which its rules proceed from the dogma it takes for its foundation.

Pound, *Mechanical Jurisprudence*, 8 COLUM. L. REV. 605, 605 (1908). The legal realists, including such scholars as Karl N. Llewellyn, Jerome Frank, Thomas Reed Powell, and Felix S. Cohen, later moved from this premise to plead the case for a more flexible pattern of legal thinking, which would forsake the pursuit of absolutes in favor of more fruitful studies on the actual objectives and consequences of legal choices. Although legal realism was a diverse and amorphous school of thought, its effects have been substantial. Historian Edward A. Purcell, Jr., concluded that the

[M]ovement helped establish the importance of factual research in law, the necessity of empirical studies of the legal process, the legitimacy of a more flexible constitutional interpretation, and the acceptance of a pragmatic, operational concept of law The alliance the realists helped forge between legal theory and empirical analysis fortified the trend toward sociological jurisprudence that had begun forty years before and that was to become a commonly accepted part of American law in the years after the Second World War.

Purcell, *American Jurisprudence Between the Wars: Legal Realism and the Crisis of Democratic Theory*, AM. HIST. REV., Dec. 1969, at 426, 446. From the Brandeis briefs of the New Deal cases to famous footnote 11 of *Brown v. Board of Education*, "sociological jurisprudence" has emerged as the major factor shaping the modern legal order, and, indeed, a "pragmatic, operational concept of law" has gained large acceptance. This acceptance is clearly reflected in the writings of Dean Carl Auerbach.

Perhaps the best example of Dean Auerbach's position on the nature of law, and the statement that stands in greatest contrast to the philosophy of Dean Pattee, is the following:

It is the beginning of wisdom in law, as in ethics, to accept the impossibility of deriving legal or ethical rules from statements of fact by any logical process

. . . . [T]he difficulties facing the legal philosopher may not be as great as those encountered by the moral philosopher, because the function of law is to serve practical ends, and its concern, therefore, is primarily with instrumental, not intrinsic, good. Thus, even if we grant that reason is powerless to settle conflicts about the ultimate ends of life, these are not the conflicts the legal order is called upon to resolve.

Auerbach, *On Professor H.L.A. Hart's Definition and Theory of Jurisprudence*, *supra* note 29, at 49-50. If, as the quotation suggests, law is no longer considered a principle of nature but rather an instrument designed to achieve certain social objectives, then the basis for legal decisions ought to be predictions of their actual effect rather than inquiries concerning their conformity with certain philosophical precepts.

The role of the social sciences in the development of law had been of growing importance to all of Minnesota's deans since Dean Fraser. In 1930, by stressing the need for more social science materials in legal education as one of the reasons for

Dean Auerbach's concern with fostering cooperation between lawyers and social scientists has led him to an active role in several associations dedicated to this objective and to the improvement of law. He is a member of the National Research Council (1967-present) and the Executive Committee (1969-1973) of the Assembly of Behavioral and Social Sciences; a member of the Board of Trustees of the Law and Society Association (1966-1969, 1978-present); and a member of the Editorial Advisory Board of the American Bar Foundation Research Journal (1976-present). He served from 1968 to 1973 as an Associate Editor of the *Law and Society Review*. Finally, he has been a member of the American Law Institute since 1966.⁴⁹

B. THE NEW BUILDING

1. *A Concept of Quality*

As has been noted, it was clear from the start that Dean Auerbach's first priority was, necessarily, the procurement of a new physical facility for the law school.⁵⁰ Fortunately, he did not come to the task unprepared—far from it. Indeed, Dean Auerbach had played a significant role in the effort in 1967, when he authored the report that was the blueprint for the design of the building.

The course of the new building drive, surprisingly protracted and arduous, reveals a great deal about the present and the future of the University of Minnesota Law School. In the interplay between the law school, the University central administration, the Regents, and the legislature, differing concepts of the role of lawyers in society and the mission of the law school became obvious. Miscommunication, both within the University and between the University and the legislature, also caused a number of problems. Finally, a statewide political turnabout, a recession, and inflationary pressures also affected the course of the drive. In the end, perseverance and compromise,

developing the Minnesota Plan, Fraser placed Minnesota at the forefront of the response of legal educators to the legal realists. Later, Dean Lockhart demonstrated his commitment to sociological jurisprudence by his insistence, in his writings on obscenity, that laws proscribing obscene materials must be supported by empirical studies establishing a causal relationship between obscenity and antisocial conduct. Upon his retirement, Dean Lockhart predicted that "[l]awyers and legal scholars will learn to work more closely with social scientists and draw upon their knowledge in rethinking and reforming many legal theories." *Dean Lockhart to Retire*, U. MINN. L. ALUMNI NEWS, Winter 1971, at 4-5.

49. Auerbach Interviews, *supra* note 7.

50. See text accompanying note 1 *supra*. Although the early phases of the long campaign to obtain a new law school building occurred during the administration of Dean Lockhart, all of the events in this extended effort are recounted here to record the entire story of this major development in the history of the law school.

together with the generous support of the bar, produced a building fully capable of housing an excellent program of legal education. Although adversely affected by the long and consuming new building problem, the law school currently stands ready to rebuild and renew its continuing commitment to excellence.

The first step in what was to become the new building drive occurred in 1962. Although a major addition to Fraser Hall had been completed only six years earlier, the increasing demand for legal education made it apparent to the faculty and Dean Lockhart that the law school would be needing more space in the near future. This need was expressed in detail to University President O. Meredith Wilson,⁵¹ but to no immediate effect. By 1964, the increased interest in legal education forced the law school to adopt, for the first time in its history, a limitation on its first-year enrollment.⁵² Although initially the restriction produced the desirable effect of improving the law school's admissions standards, Dean Lockhart anticipated that the restriction would soon cut too deeply and would deny admission to many qualified Minnesota applicants merely because of lack of space.⁵³ Although this point was made recurrently throughout the next five years,⁵⁴ the plea received little attention from the University administration until President Wilson was succeeded by Malcolm Moos in 1967.⁵⁵

Internally, however, the law school had been planning for a new building effort for some time. A faculty report, approved in 1962, had predicted that enrollment at the school would double between 1962 and 1970 and called for a new building with an 800-student capacity to be constructed on the West Bank campus.⁵⁶ Three years later, a planning committee, chaired by Professor Auerbach,⁵⁷ was formed

51. See Letter from Dean William B. Lockhart to President Malcolm Moos (Sept. 15, 1967) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

52. See Stein, *The Lockhart Years*, *supra* note 19, at 895.

53. See Letter from Dean William B. Lockhart to President Malcolm Moos (Sept. 15, 1967), *supra* note 51.

54. See generally Lockhart, *Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1964-66 (1966); Lockhart, *Law School* in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1962-64 (1964); Lockhart, *Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1960-62 (1962).

55. See Letter from Dean William B. Lockhart to Regent Lyman Brink (Jan. 29, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

56. See Minutes of the University of Minnesota Law School Faculty (Oct. 3, 1962).

57. See Minutes of the University of Minnesota Law School Faculty (Oct. 7, 1965).

and charged with the task of predicting the school's enrollment potential and the developments in legal education that a new building design should anticipate. Recognizing the propriety of first planning the school's educational program and then designing a building to facilitate that program, the faculty also charged this committee with establishing the school's programmatic goals. The University central administration, which had also adopted this approach throughout the system, stressed, "Since the approved programmatic statements will provide the basis for cost estimates and will be the background documents from which building committees will work when funding is accomplished, the need for thorough and competent study . . . cannot be overstressed."⁵⁸

In the law school, the study was thorough indeed. Prepared over the course of two years with the aid of both a University and a Lawyer's Advisory Committee,⁵⁹ the final report was a comprehensive analysis of the law school that has been matched only by one other document in the institution's history—the 1955 Self-Survey. Like the Self-Survey, authored by Professor Lockhart,⁶⁰ this report, entitled *The University of Minnesota Law School in the Decades Ahead*, was an expression of the goals of the future administration of its author, Dean Auerbach. Adopted by the faculty on December 7, 1967, the 122-page report formed the basis for the law school's building plan and is still a source of the school's programmatic objectives.

a. The Decades Ahead—The Law School's Vision

Perhaps more important than the many predictions and recommendations of the *Decades Ahead* report was its underlying tone—a tone stressing the quality to which Minnesota should aspire. Without stating it explicitly, the report seems predicated on the premise that the University of Minnesota Law School had been, was then, and should in the future remain among the most outstanding of the nation's law schools. Since Dean Vance had led the school through a period of ascendancy fifty years earlier (1911-1920),⁶¹ Minnesota had consistently been considered among the best law schools in America.

58. Memorandum from Vice President Laurence R. Lunden to Deans and Directors (July 3, 1967) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

59. See *The University of Minnesota Law School in the Decades Ahead*, at 2-3 (Dec. 6, 1967) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) [hereinafter cited as *The Decades Ahead*].

60. See Stein, *The Lockhart Years*, *supra* note 19, at 810 & n.1.

61. See generally Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part II: The Vance Years—A Time of Ascendancy*, 62 MINN. L. REV. 857 (1978) [hereinafter cited as Stein, *The Vance Years*].

The law school had long been one of the strongest colleges in the University and had a national reputation for excellence. The Decades Ahead report expressed the belief that the school's fifty-year experience with high quality legal education ought not to be abandoned. Its tone was, simply, that in planning a program of education at the University of Minnesota Law School, excellence was an appropriate objective. Many of the subsequent difficulties encountered in the effort to obtain the new building were based on the fact that this objective was not shared by all.

The report itself was organized around the constituencies that the law school sought to serve. The introduction listed, in order of the priority of their claims, the law school's four major constituencies: students seeking professional education, the University as a whole, the legal profession, and the people of Minnesota.⁶² While it recognized that most of the law school's policies simultaneously affected its responsibilities to several of its constituencies, the report proceeded to analyze the school's performance for each one of these groups.

(1) Meeting the Needs of Students

(a) How Many Students Should be Taught

The first constituents considered were the students who sought a legal education. The preliminary issue, given the recent and dramatic rise in demand, was how many of these students the law school should seek to educate. In November 1967, the University's Bureau of Institutional Research had projected that the law school's 1967 enrollment of 611 students would swell to 907 students in 1975 and to 1,054 students in 1980.⁶³ As staggering as this predicted increase was, the law faculty thought it to be conservative; because it was based on the assumption that the 1966 ratio between law school and other University enrollments would continue into 1975 and 1980, the prediction did not take into account a variety of other factors that could accentuate the increase.⁶⁴

Should the law school expand to meet this demand? On this issue, which was to be debated long and hard in the course of the new building drive, the position of the law faculty was clear:

We are strongly of the view that the University of Minnesota Law School should grow in size to satisfy the estimated student demand for legal education. We have considered the question of whether there will be a demand for this increasing number of law-

62. The Decades Ahead, *supra* note 59, at 1.

63. *Id.* at 9.

64. *See id.* at 10-11.

yers we would thus be graduating. Before dealing with this question, however, we should like to state that it is our position that the State of Minnesota should plan its facilities for legal education on the basis of estimates of the demand for legal education rather than for lawyers. The state should undertake to open the gates of opportunity in the law for all those qualified to enter. The competitive market for legal services will then determine the success or failure of each individual lawyer.⁶⁵

Although the decision to accommodate the rising number of qualified applicants was based primarily on egalitarian principles, it was buttressed by a placement survey of Minnesota law graduates of the previous five years. Although graduates with lower grade averages were reported to have experienced some difficulty in finding jobs of their choice, no unemployment was apparent and starting salaries were steadily rising.⁶⁶ While admitting that a variety of factors affecting the state and national market for lawyers made precise prediction of future demand difficult, the tone of the report was clearly optimistic. So, too, was its final recommendation that facilities be provided for 1,000 students, with potential for further expansion should the future warrant it.⁶⁷

(b) How to Improve Instruction

The problem of how many students the law school ought to instruct was only a part of the larger issue of the quality of instruction

65. *Id.* at 12.

Interestingly, 56 years earlier Dean Vance had predicated his administration on the opposite principle:

For him, it was the state's interest in a highly qualified and competent bar, rather than the individual's interest in qualifying for a profession, that justified the state's support of the school. The obligation of the law school was to society, and it was fulfilled by training the "relatively small and select body of young men—selected because of their moral and intellectual fitness—for efficient service to the state and the bar, on the bench, and in the legislature." Obligations of the school to its applicants and students were only derivatives of this primary obligation.

Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part II: The Vance Years—A Time of Ascendancy*, 62 MINN. L. REV. 857, 860 (1978) [hereinafter cited as *The Vance Years*] (quoting *A Statement from Dean Vance*, MINN. ALUMNI WEEKLY, Dec. 11, 1911, at 12).

Although an expansion of the student body in 1967 could be made without compromising the goal of selecting applicants of high intellectual fitness, the two positions do reflect significantly different perspectives on the mission of the state-supported law school. If faculty members were aware in 1967 that their position represented a change in the school's policy, they did not mention it.

66. See *The Decades Ahead*, *supra* note 59, at 13-14.

67. *Id.* at 14.

that should be provided. Here, again, an expression of fundamental principles was thought to be warranted. The law school's task, in the oft-quoted phrase of Felix Frankfurter, with which the faculty agreed, was "to teach lawyering, not the law."⁶⁸ But what, precisely, was implied by the goal of teaching lawyering? While not fully defining the concept, lawyering encompasses, at the least, the development of a particular thought process, the use of an analytical approach to problem solving, a facility and familiarity with certain types of legal and social science materials and research, an ability to communicate positions and conclusions effectively, and the inculcation of a set of ethical norms and values arising from the role of the legal profession in society.

Lawyering, in the primary sense of the term, is first and foremost the utilization of a particular thought process for the analysis and solution of a problem. Teaching that thought process, often described as legal reasoning or legal analysis, had long been the goal of the casebook method of American legal education. Originated by Dean Langdell of Harvard in 1871, the casebook movement had been championed in Minnesota by Dean Vance in the 1910s⁶⁹ and had remained the mainstay of Minnesota's legal education system. Indeed, in 1967 the law faculty was still committed to the casebook method as the best means of teaching the thought processes of a lawyer.⁷⁰ Defects in the casebook method, however, had become apparent. It was with these defects that the faculty was concerned.

Ironically, perhaps the most crippling by-product of the casebook method of legal education arose from the fact that it had proved to be so remarkably inexpensive. The discussion of cases, like the lectures that had preceded it in the pedagogical history of legal education, could be and often was accomplished in very large classes. Consequently, law schools quickly became locked into a pattern of extremely high student-faculty ratios. While this was true nationally, it was particularly troublesome at Minnesota. In fact, the *Decades Ahead* report noted that the student-faculty ratio at Minnesota had not really improved significantly in the previous fifty years, and that the law school's ratio of student credit hours to faculty personnel was the worst of all the graduate schools in the University.⁷¹

As a result of this pattern of high student-faculty ratios, innovations in teaching that required a lower ratio and a correspondingly higher price tag were difficult to implement. Yet, it was precisely these kinds of innovations, stressing the individualization of instruc-

68. *Id.* at 15.

69. See Stein, *The Vance Years*, *supra* note 61, at 859.

70. See *The Decades Ahead*, *supra* note 59, at 18.

71. *Id.* at 19.

tion, that were necessary to teach the other aspects of "lawyering." Providing research experience, teaching communication and advocacy skills, and developing in the students a sense of professional and social responsibility, all required more individualized approaches. Clinical education, which then occupied a larger part of the curriculum than in earlier years, was dependent on direct student supervision and thus required a more favorable student-faculty ratio.

At Minnesota, the need for individualization had been articulated earlier in the 1955 Self-Survey, and some progress had been made in the 1950s and the early 1960s.⁷² First-year students, however, still met in classes of 100 with but one exception, a "small" section class of 50. Second- and third-year courses were also restricted by the pedagogical limitations of large classes (often of 100 to 150 students), which prohibited flexibility in methods and materials.⁷³

The faculty sought to solve the student-faculty ratio problem by proposing a substantial increase in the size of the faculty. The student-faculty ratio in 1967 was twenty-one to one.⁷⁴ An increase of nineteen faculty members would be required to maintain the same ratio for the planned student enrollment of one thousand. To achieve that goal by 1974, the year in which it was hoped that the new facility would be a reality, the school would have to add three new faculty members each year for seven consecutive years.⁷⁵ And to achieve the more desirable ratio of fifteen to one, the school would have to continue adding three positions per year until 1980, by which time the faculty would have grown from twenty-nine to sixty-six members.⁷⁶ Though adding new faculty members at this pace was admittedly ambitious, it was in keeping with the law school's concept of quality. With the proposed improvement in the student-faculty ratio, it was hoped not only that the existing innovative techniques would be continued and improved, but also that new innovations could be encouraged.

A second and related adverse by-product of the casebook method of instruction was a preoccupation in law schools with strictly legal materials, particularly appellate court decisions. The faculty agreed with Professor J. Willard Hurst that "the case method tends to isolate the 'study of law from the living context of the society' by closing 'the approaches to related knowledge' and encouraging 'treatment of law

72. See Stein, *The Lockhart Years*, *supra* note 19, at 847-59.

73. See *The Decades Ahead*, *supra* note 59, at 21.

74. *Id.* at 81.

75. *Id.*

76. *Id.* at 81a.

as a self-sufficient body of learning.'"⁷⁷ This preoccupation with exclusively judicial approaches to legal problem solving was particularly distressing in light of the emerging importance of the social sciences to legal decision making. This defect had long been widely lamented and served as an impetus for Dean Fraser's innovative Minnesota Plan thirty years earlier.⁷⁸ Since that time, the incorporation of social science materials into the law curriculum had been a consistent goal of Minnesota and other good law schools. Yet the fear that not enough was being done continued, and the rapid development of the social sciences made the problem more acute.

Certainly, given Professor Auerbach's predominant concern for a closer association between the law and the social sciences, this issue was a real one to him. But, as he expressed in his writings, the problem was not merely the result of the law school's pedagogical techniques. He was also concerned about the lack of coordination between social science and legal research. Consequently, the call for further integration of social science material into the law school curriculum, made in the 1967 report, was only part of the solution offered. The rest involved increasing the commitment to interdisciplinary research in the law school and in the University. As this latter proposal concerns primarily the law school's relationship to the University, it will be discussed later.⁷⁹

(c) Improving the Environment for Legal Study

A final proposal concerning the law school and its primary constituency, its students, was aimed at improving the environment for study at the school. Following a trend that had been dominant since the 1950s,⁸⁰ the report advocated further intensification of legal studies, both in specific courses and in the environment of the school. Significantly, other law schools had found that nearby residence facilities for their students resulted in a general enhancement of the educational environment of their schools. Indeed, two Minnesota faculty members who had been recently lost to raiding schools listed "the belief that a school with a built-in residence facility for students would mean a more responsive and stimulating student body"⁸¹ as a

77. *Id.* at 18 (quoting J. HURST, *THE GROWTH OF AMERICAN LAW* 265-66, 268 (1950)).

78. See Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part III: The Fraser Years—A Time of Excellence and Innovation*, 62 MINN. L. REV. 1161, 1186-89 (1978) [hereinafter cited as Stein, *The Fraser Years*].

79. See text accompanying notes 84-88 *infra*.

80. See Stein, *The Lockhart Years*, *supra* note 19, at 898-904.

81. Lockhart, *Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1964-66, at 238 (1966).

reason for accepting their offers. Citing a "widely scattered student body" as a "serious obstacle" to "cooperative work and discussion,"⁸² the Decades Ahead report recommended that Minnesota, in planning for its new law building, also make plans for an adjacent residence facility.⁸³

In summary, the Decades Ahead report recommended that the University of Minnesota Law School move to meet the needs of its most important constituents, its law students, by expanding its enrollment, improving the student-faculty ratio to permit improvements in legal instruction, and providing a residence facility. The desired result was the education of a greater number of students in a more individualized program of instruction in an improved environment for study. With this primary obligation determined, the report turned to the school's corollary obligations to its other constituents.

(2) The Law School and the University

After its obligations to students, the law school's next priority was to satisfy the responsibilities arising from its place within the University community. The University nexus mandated that the law school be "more than a professional recruiting and training instrument," in that it should actively advance the frontiers of knowledge through research, study, and discourse.⁸⁴ With Auerbach's hand clearly writing, the report expressed the expectation that the law school would "take the leadership in encouraging University-wide study of the relationships between the legal order and the social order and the use of law as an instrument for achieving justice among men."⁸⁵

Research, then, was a major obligation of the law school to the University. However, the research envisioned, at least by Auerbach, was not exclusively of the type traditionally pursued in the law school. Like the casebook method of teaching, doctrinal case law research—the type of research traditionally performed in the law school—often tended to ignore the broader concept of law that had developed. As a committee of the Association of American Law Schools had observed in 1966, traditional legal research was failing its mark because "legal problems are to a rapidly growing degree not case-to-case problems but rather those of complex administrative and economic systems and subsystems, for which case-oriented anal-

82. The Decades Ahead, *supra* note 59, at 41.

83. *Id.* at 41-44.

84. *Id.* at 44.

85. *Id.* at 45.

ysis is an approach of only incomplete relevance and effectiveness."⁸⁶ The gravity of this failure was underscored by the committee's warning that unless "new research departures are made, the law schools and the legal profession may well become ineffectual and perhaps redundant, in regard to the major legal issues of the day and of the future."⁸⁷

To avoid this consequence and to promote law school participation in the movement for a more lively interchange between legal and social science scholars, the Decades Ahead report recommended that the law school provide a home for a Center for the Study of Law in Society. Predicting that such a Center, once established, would find ample support from private philanthropy, the faculty saw it as a means of bringing together interested scholars and focusing their research in the most fruitful directions.⁸⁸ By providing these scholars with a place to test out their hypotheses and to conduct their studies, the faculty hoped to ensure that such interdisciplinary work, essential to the new concept of legal education and, indeed, of lawyering, would thrive.

In addition to the Center, the faculty made a recommendation even more basic to the research efforts of the school—that legal research be funded directly through the law school budget.⁸⁹ Traditionally, the law school competed with other units in the University for research grants made through a general graduate school research allotment. In order to avoid this traditional practice and make research more than a part-time function of the school, the faculty recommended that legal research be funded directly through the law school budget. The faculty also recommended that funding be increased so that within three years, three faculty members could be released to full-time research or study each year.⁹⁰ Research funded on a project basis by sources outside of the law school was believed to be too tentative and too small a commitment on which to base the research efforts of a major law school.

Being a University law school, however, implied more than just an obligation to ambitiously undertake legal research; it also implied an obligation to teach about the legal order to students throughout the University. Citing many areas of study in which a basic understanding of the legal system was essential, the report advocated an

86. *Id.* at 64 (quoting *Report of Committee on Research*, ASSOCIATION OF AMERICAN LAW SCHOOLS, PROCEEDINGS 1966, at 173 (1966)).

87. The Decades Ahead, *supra* note 59, at 65 (quoting *Report of Committee on Research*, ASSOCIATION OF AMERICAN LAW SCHOOLS, PROCEEDINGS 1966, at 172 (1966)).

88. See The Decades Ahead, *supra* note 59, at 67-68.

89. See *id.* at 65.

90. *Id.* at 66.

expanded role for legal education in the University at large.⁹¹ While the law faculty denied having the "exclusive responsibility for teaching legal subjects throughout the University," it did offer to provide an undergraduate course described as an introduction to the legal process and to increase collaboration with other faculties in providing interdisciplinary seminars both in and out of the law school.⁹² Freeing professors for non-law school instruction was, of course, again tied to an increased faculty size.

In sum, the law faculty identified two major obligations arising out of its relationship with the University and described how these obligations could be better met in the future. A new research facility, the Center for the Study of Law in Society, and a greater institutional commitment to legal research could help the law school satisfy its responsibility to expand the boundaries of legal knowledge. Increasing the school's involvement in the teaching of law throughout the University would ensure that the law faculty's unique perspective on the legal order was available to a university-wide audience.

(3) The Law School and the Bar

The third constituency with which the Decades Ahead report was concerned was the practicing bench and bar.⁹³ The processes that had been making law increasingly complex and dynamic throughout the twentieth century were, if anything, accelerating. Consequently, specialization and the need for continuing legal study were fast becoming the rule rather than the exception. Indeed, continuing legal education for the Minnesota bar had already come of age. In 1964, as a result of joint negotiations between the University of Minnesota Extension Division, the University Law School, William Mitchell College of Law, and the Minnesota State Bar Association, the Extension Division had become the institutional home of Continuing Legal Education (CLE),⁹⁴ an organization offering legal instruction to the practicing bar. Recognizing that the needs of practicing lawyers generally required programs with a heavy practical emphasis, the Decades Ahead report concluded that the faculty would frequently be used in

91. *See id.* at 49-51.

92. *Id.* at 52-59.

93. *See id.* at 70-79.

94. *See id.* at 70. In 1976, the alliance between the Minnesota State Bar Association and the University's Extension Division ended, and CLE moved to a new home in the Bar Association's offices. Minnesota Continuing Legal Education, now called MCLE, is a formal division of the Minnesota State Bar Association. Relations with the University of Minnesota Law School have continued, however, and if anything, have been strengthened as a result of the CLE move.

an advisory rather than in a directly instructional capacity.⁹⁵

Disclaiming primary responsibility for the scope and content of the CLE courses, the law school nonetheless desired to maintain a cooperative posture toward the program. It envisioned doing so by housing the CLE offices in the law school building, and by making the facilities of the institution—its library, classroom space, and faculty expertise—easily accessible to the CLE program.⁹⁶ Further, it projected increasing faculty involvement in those areas of the CLE curriculum in which the faculty could be helpful. Anticipating that CLE responsibilities would eventually be included in the regular workload of the law school faculty,⁹⁷ the report underscored yet another reason for improving the student-faculty ratio in the years ahead.

The law school also planned to strengthen its relationship with the bar by improving the quality of its basic curriculum through increased involvement of the bar. Thus, the report outlined plans to continue and, indeed, increase the use of practitioners as instructors in seminar settings, to establish a visiting chair on the faculty for a distinguished practitioner, and to create from among the state's practicing bar a board of visitors to counsel the law school on the strengths and weaknesses that the bar saw in the school's educational program.⁹⁸ In addition, the report proposed a year's leave of absence for permanent faculty members, during which they might acquire practical experience in their areas of law. By involving members of the bar in the law school in these ways, it was hoped that the perspectives of the practitioner would be woven together with those of the legal theorist and legal scholar to strengthen the fabric of the law school curriculum.

(4) The Law School and the State

The people of the state of Minnesota were the final constituents to whom the law school's obligation was detailed in the Decades Ahead report. Recognizing that the law school discharged much of its obligation to the state by adequately serving the students, the University, and the bar, the faculty also believed that the school had much to offer to the solution of public questions. The report expressed a philosophy close to Dean Auerbach's heart in quoting Julius Stone:

We must enable and even encourage scholars to address themselves to [practical evils and practical problems] without making

95. *Id.* at 76-77.

96. *Id.* at 75.

97. *Id.* at 76.

98. *Id.* at 78-79.

them feel that they have wandered from the main roads of scholarship or that the activity is any less respectable or important than building or criticism or testing of overall theoretical systems.⁹⁹

It was proposed that this obligation would be best discharged by active participation in the resolution of public policy problems. Sounding a theme familiar since the years of Dean Fraser,¹⁰⁰ the law school faculty recommended that, in addition to encouraging ad hoc participation by individual faculty members in civic projects, the law school should establish, as a part of the Center for the Study of Law in Society, a Legislative Research and Drafting Institute. With topics of research chosen from among suggestions by the legislature, the attorney general, state agencies, and citizens groups, the Institute could perform a public service while maintaining its "principal role as a center of independent thought and criticism."¹⁰¹ Through such an institute, the school could ensure that its research efforts would not neglect the current needs of the community by pursuing only theoretical breakthroughs.

(5) Detailing the Inadequacy of the Existing Library, Administration, and Building for the Decades Ahead

After outlining the programmatic changes mandated by full discharge of the law school's responsibilities to its various constituencies, the Decades Ahead report turned to an analysis of the ramifications of these changes on the library, administration, and physical facilities of the law school.

The library, expanding at the rate of 10,000 volumes per year, was rapidly approaching the physical capacity of Fraser Hall and had already outstripped the managerial capacity of its small staff. In planning for its future, several stumbling blocks were apparent. While it was clear that "the proliferation of printed material [was continuing] at an unprecedented pace," it seemed probable that technological breakthroughs in information storage and retrieval systems would reduce the future need for traditional library shelving space.¹⁰² Consequently, it was difficult to predict precisely how much stack space, how much computer space, and how large a library staff would be required in the years to come. The faculty estimated that advancing technology could be relied upon to produce systems which would allow the main stack portion of the library to be held to 500,000

99. *Id.* at 79-79a (quoting J. STONE, *SOCIAL DIMENSIONS OF LAW AND JUSTICE* 27 (1966)).

100. See Stein, *The Fraser Years*, *supra* note 78, at 1186.

101. *The Decades Ahead*, *supra* note 59, at 81.

102. *Id.* at 83.

volumes. Though this figure would accommodate less than twenty years' growth at the then-current rate of 10,000 volumes per year, technological prospects seemed, at the time, bright enough to justify this limitation.¹⁰³

If the prediction of the library's space needs was somewhat tentative, so too was the prediction concerning the library's staff requirements. While it was difficult to determine whether newly developing methods would require more or fewer librarians, it was certain that the current staff was too small for the job at hand. The cataloging project, a major task facing librarian Leon Liddell when he joined the faculty in 1949,¹⁰⁴ still had not been completed.¹⁰⁵ An even greater task, that of classifying the collection, was also being considered.¹⁰⁶ But even the day-to-day operations of the library were bogged down due to a lack of staff and a congested facility. Consequently, the Decades Ahead report recommended that the library staff be more than doubled by 1980.¹⁰⁷

The school's administrative problems would also be increased as a result of an expanded student body and faculty. In 1967, with a student body of 550 to 600 and a faculty of 25 to 30, the school was administered by a dean and two assistant deans.¹⁰⁸ If the size of the school were doubled, as planned, at least two more assistant deans would be necessary.¹⁰⁹ Furthermore, to accommodate this growth and to encourage communication and efficient operation in the administration of the school, expanded office space and clerical services would have to be provided.

Finally, the Decades Ahead report considered the ramifications of its programmatic recommendations on the adequacy of its physical plant—Fraser Hall. Its conclusion was simply, "[T]he present Law School building is inadequate for our present program, let alone the plans proposed for the coming decade."¹¹⁰ The limitations of the existing building, which with its addition was designed to accommodate 450 students and 21 faculty members, required that the first-year class be restricted to 250 students and that the faculty be limited to 30 persons. Indeed, the building offered such limited study space that many law students came to the law school only for classes, retreating

103. *Id.*

104. See Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part IV: The Pirsig Years—A Time of Transition, 1948-1955*, 63 MINN. L. REV. 299, 315, 316 (1979) [hereinafter cited as Stein, *The Pirsig Years*].

105. See *The Decades Ahead*, *supra* note 59, at 86.

106. See *id.* at 84.

107. *Id.* at 88.

108. *Id.* at 90.

109. See *id.* at 92.

110. *Id.* at 98.

quickly thereafter to pursue their studies elsewhere. In addition, many integral components of the school's educational offerings—the *Law Review* and the clinical programs—were then housed outside of the law school building. The space provided for programs remaining in the building was critically substandard. The library was rapidly filling a structure that was incapable of protecting its valuable resource from either fire or theft. Classroom spaces designed exclusively for the large-class, casebook method of instruction were ill suited to smaller classes and individualized work. A new building, already necessary to make the school's current offerings more successful, would certainly be required to achieve the law faculty's objectives of enlargement and improvement in the decades ahead.¹¹¹

b. The Building Committee Report

The Decades Ahead report was adopted by the faculty on December 6, 1967.¹¹² At the same meeting, Dean Lockhart asked for and received authorization to appoint a Law School Building Committee charged with the responsibility of translating the programmatic recommendations of the Decades Ahead report into the space and equipment requirements of a new law school building. Later that same day, Dean Lockhart asked the author to chair that Committee, composed of eleven faculty and five students.¹¹³ Three months later, moving with great speed so as not to jeopardize the law school's chances in the 1969 legislative session, the Committee produced a comprehensive 139-page report that attempted to itemize the physical facility needs of each program detailed in the Decades Ahead report. Square footage and equipment specifications were carefully developed in recognition of the fact that they would serve as the basis of the legislative request for the new building and represent the source document that the architect would use in designing the new facility.

In discharging its assignment, the Building Committee divided into seven subcommittees to study each of the seven functional areas that the law school building would house: a law library area, a faculty office area, an administration area, an instructional area, a student

111. See *id.* at 98, 103.

112. It was then approved by the University's new President, Malcolm Moos, and presented to and accepted by the Regents on March 8, 1968. See *Untitled Memorandum* (Mar. 8, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

113. The original members were Deans William B. Lockhart and Robert F. Grabb; Professors Carl A. Auerbach, Bruno H. Greene, Stanley V. Kinyon, Peter W. Martin, Allan H. McCoid, Stephen B. Scallen, Ferdinand P. Schoettle, Jr., Robert A. Stein, and Charles W. Wolfram; and students John T. Behrendt, Phillip A. Erickson, Michael J. Remington, Richard B. Solum, and Robert R. Weinstine.

activities area, an area for services to the bar and community, and a residence hall area. Each subcommittee prepared a report, often in extraordinary detail, giving its recommendations concerning its area. These were then edited and compiled into the final report.¹¹⁴

In planning for the law library, spacial requirements were projected on the basis of an expected capacity of 600,000 volumes. This projection, which was 100,000 volumes greater than the Decades Ahead recommendation, reflected the results of further study of the technological progress that might reasonably be expected in the next few years.¹¹⁵ The requirements also reflected a determination that seating should be provided for eighty percent of the projected student enrollment of 1,000 students.¹¹⁶ The plan called for 300 of these study spaces to be provided in one large reading room,¹¹⁷ 100 spaces in a smaller reading room,¹¹⁸ and 400 spaces in individual study carrels dispersed throughout the stacks of the collection.¹¹⁹ Additionally, it was recommended that the library include twenty small (six-person) discussion rooms,¹²⁰ a fifty-seat periodical lounge,¹²¹ a thirty-seat faculty reading room,¹²² a reserve book area,¹²³ a rare book room,¹²⁴ and a microfilm reading room.¹²⁵ Finally, office and work space was planned to accommodate a library staff of forty people.¹²⁶ All together, the library accounted for over one-half of the total space contemplated in the law school building proposal.¹²⁷

The faculty area included office space for seventy-one full-time faculty members and ten visitors.¹²⁸ Based on the planned expanded enrollment and improved student-faculty ratio, provision was made for sixty-six full-time instructional faculty.¹²⁹ The faculty area also

114. Report of the Law School Building Committee, Space and Equipment Requirements of the New Law School Building (Mar. 29, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, at Minneapolis, Minnesota) [hereinafter cited as Building Committee Report].

115. *Id.* at 13.

116. *Id.* at 16.

117. *Id.* at 4.

118. *Id.* at 6.

119. *Id.* at 15.

120. *Id.* at 9.

121. *Id.* at 4.

122. *Id.* at 8.

123. *Id.* at 18.

124. *Id.* at 19.

125. *Id.*

126. *Id.* at 20-36.

127. The library accounted for 118,631 of the total 228,078 assignable square feet proposed in the Building Committee Report. See *id.* at 136, 139.

128. *Id.* at 37.

129. *Id.*

included offices for five faculty members who would be on research leave each year in accordance with the recommendation of the Decades Ahead report. The ten smaller visiting faculty offices were to be used by scholars attracted to the proposed Center for the Study of Law in Society or by other special programs of the law school.

Planning for a secretary-faculty ratio of one to two, thirty-five offices were planned for secretaries and research assistants. With each office accommodating two persons, it was planned that thirty-five secretaries and thirty-five research assistants could be housed in offices convenient to the faculty they served.¹³⁰ Finally, the faculty area was planned to include a large conference room¹³¹ and a faculty reading room.¹³²

In the instructional area, the new law school building plan included provisions for twelve seminar rooms, thirteen classrooms, one large auditorium, and three courtrooms.¹³³ The large number of seminar rooms, each with a thirty-person capacity, reflected the faculty's desire to make legal education more individualized and intensive. The thirteen classrooms included one room with a capacity of 150, four rooms with a capacity of 120, and eight rooms with a capacity of 50.¹³⁴ This also reflected the proposed improved student-faculty ratio and the resulting decrease in class size. The large auditorium was planned to accommodate about 400 people (the size of the entire first-year class) for unsectioned classes, special lectures, and occasional visits of the Minnesota Supreme Court.¹³⁵

The Building Report also included office space provisions for a variety of student activities or related law school programs. These included the offices of the *Minnesota Law Review*, the Law School Bookstore, the Law School Council, and three other student organizations.¹³⁶ Two student lounges were planned, a small "clean" lounge for informal discussion and relaxation, and a larger lunchroom lounge capable of accommodating 500 people.¹³⁷ The offices of the State Public Defender, the Legal Aid Clinic, Continuing Legal Education, and the Director and project leaders of the Center for the Study of Law in Society were also included.¹³⁸ Facilities for an expanded adminis-

130. *Id.* at 48.

131. *Id.* at 51.

132. *Id.* at 53.

133. *Id.* at 63, 64, 69.

134. *Id.* at 66.

135. *Id.* at 65.

136. *Id.* at 73-81.

137. *Id.* at 81-82.

138. *Id.* at 84.

trative staff and the offices of the dean and four assistant deans were also planned.¹³⁹

Finally, the Building Committee Report detailed its plans for the law student residence hall. Though it was anticipated that private funds or federal loans, not University funds, would be used to finance construction of the residence facility, the Committee reasoned that it should be planned, to the extent possible, in connection with the new law school building.¹⁴⁰ Rejecting a dormitory format in favor of the privacy and intimacy of a clustered apartment design, the Committee proposed a facility containing at least 425 apartments.¹⁴¹

2. *Securing the Legislative Authorization*

With the adoption of the Building Committee Report and its approval by the University's central administration, the law school was prepared to embark on what was to be a long and arduous campaign to secure funding for its proposal. For the next seven years the proposal would be scrutinized, questioned, and modified. The fundamental issue, the need for new facilities, along with each successive decision in the formulation of the plan, would be argued and reargued. Why the expansion to 1,000 students? Why plan for only 1,000 students? Why the improved student-faculty ratio? Why should the new law school be on the West Bank? Why couldn't the law school simply expand into facilities already available? Must the law library also be moved?

These and other questions were asked time and again as successive decision makers in the University administration and the legisla-

139. *Id.* at 55.

140. *Id.* at 100.

141. *Id.* at 100-03. In an excellent example of the detail found throughout the entire Building Committee Report, the discussion of the residence facility described not only how to cluster married and single students, but also how much recreation space to provide, what color the apartment walls should be painted, where the study space in each apartment should be located, and what type of telephones should be installed. *See id.* at 100-35.

The residence hall section of the Building Committee Report was also interesting as a sociological study. A central concern in the planning and design of the area was the elimination of the caste-like social system that, for many, characterized student interaction at Minnesota and other law schools. *See id.* at 102. An attempt was made to reduce the tensions produced by distinctions of wealth, academic performance, and the like by planning so as "to prevent a continuation of social and physical separateness." *Id.* If the building succeeded in "encouraging interchange between students by broadening their opportunities for cooperative work, discussion and social life; and [in] furnishing adequate privacy and recreational opportunities so as to make the residence an attractive, human and vital place for students and their families to live," then, thought the Committee, it would have accomplished its primary goals. *Id.* at 101.

ture considered and reconsidered the request. In the course of this process, millions of dollars were shaved off the project by deleting facilities that, however desirable, were not vital to the school's central mission. At the same time, millions of dollars were added to the expense of the project by the fast-paced inflationary spiral of the 1970s. Yet, while the \$15 million proposal of 1968 varied significantly from the \$14.3 million building dedicated in 1978, the basic concepts of the initial proposal were fully realized in the completed building. As a result, the school's traditional pursuit of excellence, long stalled by the problem of inadequate facilities, would begin anew.

a. The 1969 Legislative Session

In the mid-1960s, the University had scheduled the law school building for inclusion in the 1969 legislative request. The law school proceeded with that time frame in mind. But in the summer of 1967, the University tentatively moved the law school building request back to the 1971 session. Unsurprisingly, this drew a lengthy appeal from Dean Lockhart to the University's newly inaugurated president, Malcolm Moos, urging reconsideration.¹⁴² Even though the planning committee was still working on the Decades Ahead report, it was clear to those in the law school that the need was too acute to justify any delay. Dean Lockhart was particularly concerned by the fact that the restriction in enrollment forced on the school by the size of existing facilities was beginning to cut deeply into the lives of many Minnesotans who were both qualified and desirous of studying law. He stressed that turning away qualified applicants without simultaneously making a strong effort to obtain expanded facilities placed the law school and the University in a very poor public relations position, one that would cause increasing discomfort for the school in the years ahead.¹⁴³ This argument and those concerning the effects of the inadequate facilities on existing programs in the school apparently convinced President Moos, and the law school building was reinstated in the 1969 legislative request.

As the fall of 1967 wore on into winter, however, time became of growing importance. The Legislative Building Commission, which at that time considered all of the state's building projects before they could be presented to the legislature, would begin looking at the University's 1969 request in the summer of 1968. Before the law school's proposal could be forwarded to that body, it had to be adopted successively by the law school faculty, the University central

142. Letter from Dean William B. Lockhart to President Malcolm Moos (Sept. 15, 1967), *supra* note 51.

143. *Id.*

administration, and the Board of Regents. But even as the law school's original proposal was beginning its way through this process, an alternative, the first of many that surfaced in succeeding years, was suggested. The University central administration, interested in further developing and diversifying its St. Paul campus, desired to shift some of the colleges traditionally located in Minneapolis to St. Paul. To that end, it suggested that the law school, as well as the School of Business Administration, consider locating its new facilities in St. Paul.¹⁴⁴

The law school, however, had set its sights on the developing West Bank of the Minneapolis campus as early as 1962. The West Bank offered the advantages of a location near the social science departments, facilitating the interaction recommended by the Decades Ahead report, as well as proximity to the University's new main library, Wilson Library, and convenient access by the bar in downtown Minneapolis and St. Paul. These factors had been determinative when the law school first recommended locating the new building on the West Bank, and they continued to be determinative as the faculty rejected first the St. Paul campus opportunity¹⁴⁵ and later suggestions that it take over unused facilities at Bethel College in St. Paul,¹⁴⁶ at the Southwest State University campus at Marshall, Minnesota,¹⁴⁷ and at Mankato State University.¹⁴⁸ The law school's continuing insistence on the West Bank location was testimony to the importance that it attached to the integration of social science and legal scholarship in its future program. The several proposals to move the school far away from its intellectual family were an indication of the substantial communication problems that faced the new law school building proponents.

By the summer of 1968, with the University's internal processes completed, Dean Lockhart was prepared to make the case for a new law school building to the Legislative Building Commission. The request was for one-half million dollars in planning funds for what was

144. Auerbach Interviews, *supra* note 7.

145. See Letter from Dean William B. Lockhart to President Malcolm Moos (Jan. 26, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

146. See Letter from Dean Carl A. Auerbach to Legislators Fred C. Norton, Howard Smith and Ray W. Faricy (Apr. 19, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

147. See Johnson, *A Law School at Southwest State*, Marshall Messenger, Feb. 7, 1975, at 12, col. 1 (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

148. See *Coughlan Wants Law School Funds Denied*, Mankato Free Press, Oct. 19, 1972, at 7, col. 1 (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

projected to be a \$15 million project.¹⁴⁹ If the schematic and architectural plans developed with this money were acceptable, it was expected that construction funds would be authorized in 1971.

It was then customary to make the requests for large construction proposals such as the law school building in phases, asking for legislative appropriations in each of several successive sessions. Designed principally as a device to spread the cost of these projects over several years, phasing had the disadvantages of forcing a disjunctive construction effort on what was usually an integrated building project and of threatening the project's completion with the chance of a legislative change of heart concerning later phases. For these reasons, the Law School Building Committee was wary of phasing its project. Further, it found it difficult to identify parts of the proposed facility that could be built at a later time.¹⁵⁰ Reflecting this concern, the 1969 request projected a first phase of almost \$12 million and a second phase of only \$3 million.¹⁵¹

In September 1967, Dean Lockhart had promised President Moos that if the building proposal could be rescheduled for the 1969 session, "[t]he law school alumni are prepared to mount an all-out effort to secure legislative support."¹⁵² And indeed, though pale by comparison to later lobbying efforts mounted by the school, the 1969 effort was marked by the active support of alumni and other friends of the school. Formally, the Law School Alumni Association communicated to the Legislative Building Commission its whole-hearted approval of the building request¹⁵³ and, with the financial assistance of West Publishing Company,¹⁵⁴ sent to every lawyer in the state a fact sheet explaining the school's need and encouraging bar support

149. Ten Year Building Program, University of Minnesota (1969) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

150. See Memorandum from Professor Robert A. Stein to the Law School Building Committee (Apr. 5, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

151. See University of Minnesota Ten Year Building Program, Draft No. 5 (May 10, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

152. Letter from Dean William B. Lockhart to President Malcolm Moos (Sept. 15, 1967), *supra* note 51.

153. Letter from Julius E. Davis (President of the Law Alumni Association) to the members of the Legislative Building Commission (Oct. 14, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

154. See Letter from Dean William B. Lockhart to Herbert Adrian, West Publishing Co. (Dec. 17, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

of the legislative drive.¹⁵⁵ Informally, alumni and others familiar with the legislature assisted by giving advice as to which legislators would be key to the proposal's passage and how those people might best be approached.¹⁵⁶ Finally, supporters helped with individual letters to their legislators and to the Commission members.¹⁵⁷

Partly as a result of this strong support, the law school's 1969 legislative campaign, the first of five, achieved some success. With the Building Commission's endorsement, the legislature included in an omnibus building aids bill, which was passed in June 1969, an \$80,000 appropriation "to plan a law building for 1,000 students, facility and support activities not to exceed \$8,000,000."¹⁵⁸

The appropriation was a source of encouragement and a cause for concern. Significantly, in light of the battles yet to come over the size of the student body and faculty, the legislature's appropriation seemed to openly endorse the school's plans for expansion. It also recognized that more than a remodeling of the existing facility was called for—that a new building was necessary.

On the other hand, the amount appropriated was less than

155. *A Message of the Utmost Importance to Every Member of the Bar of Minnesota* (Minnesota Law Alumni Ass'n, Dec. 5, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

156. See, e.g., Memorandum from Dean William B. Lockhart to the file re: Advice Received from Robert Dunlap (Oct. 23, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean William B. Lockhart to Senator Joseph T. O'Neill (Oct. 1, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

157. Of this latter type of support, one letter merits particular attention due to the perspective of the author and his assessment of the school and its needs. This was the letter of Roger F. Noreen, former state legislator and West Publishing Company Vice President in charge of the Law School and College Department. As a result of his position with West, Noreen had regularly visited law schools throughout the country and was thus uniquely familiar with the facilities of other fine law schools. This was his assessment: "I think almost anyone who is closely associated with legal education in the United States would rate Minnesota as being one of the top ten law schools in the country." Letter from Roger F. Noreen to Roy L. Voxland, Chairman of the Legislative Building Commission (n.d.), appended to Letter from Roger F. Noreen to Dean William B. Lockhart (Oct. 25, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). Yet Noreen observed that Minnesota was clearly falling behind in its physical plant. Most of the nation's law schools had been built between 1900 and 1925 and then rebuilt in the 1950s and 1960s. Minnesota's facility, built in 1927, had not yet been rebuilt. Among the better law schools, Minnesota alone shouldered the burden of an antiquated building. In consequence, Noreen implied that Minnesota, unable to retain the quality of its faculty, student body, and program, would begin to slip in its national stature. But, if its building needs were well met, he counseled, one could expect the school to be of continuing prominence and benefit to the state.

158. Act of June 9, 1969, ch. 1159, § 8(2), 1969 Minn. Laws 2660.

twenty percent of what had been requested. This was due to the decision to appropriate only funds for preliminary planning (based on a formula of one percent of the project cost), rather than the amount necessary to prepare detailed working drawings. But even more distressing was the fact that, in an unusually specific appropriation, the legislature seemed to require the law school to cut the cost of its proposal almost in half. Instead of planning for a \$15 million project with 228,000 square feet, the law school was apparently directed to plan an \$8 million facility with only 132,500 square feet.¹⁵⁹ Undoubtedly, some legislators found the law school's \$15 million proposal to be extravagant when they considered that Wilson Library, which housed the University's main library collection, had been built only one year earlier at a cost of \$9 million.¹⁶⁰ But it appeared that other legislators cut the proposal to \$8 million, not so much out of concern over the quality of the proposed building as in the mistaken belief that the proposal need not include space for a law library in view of the proximity of Wilson Library.¹⁶¹ If this was the cause of the legislative reduction, then the seriousness of the law school's communication problem was clear.

Regardless of the motivation, the 1969 legislative appropriation left little doubt that the law school building proposal would have to be substantially pruned and recommunicated before the 1971 session convened. Although the law school was delighted to receive the funds with which to retain an architect to proceed with the plans, it was concerned with the effect of the indicated reduction on the proposed program of the school.

b. Round Two—The 1971 Legislative Effort

The 1969 legislative session had taught the law school that its lobbying effort needed to communicate more than factual information about its building needs; it also had to fully explain the concept

159. See Memorandum re: Language of the \$80,000 Allocation (undated and unsigned) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). This Memorandum noted that the specificity of the Law School appropriation was quite unusual, given the fact that in the 1963, 1965, and 1967 legislative sessions, the University's building appropriations had all been undirected lump-sum appropriations.

160. See Building Data, *appended to* untitled report (Apr. 1, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

161. See, e.g., Letter from Dean William B. Lockhart to Rep. C.A. Johnson (June 29, 1970) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean William B. Lockhart to Regent John Yngve (Mar. 14, 1970) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

of legal education upon which those needs were based. For legislators, many of whom were totally unfamiliar with the process of legal education, it was sometimes difficult to understand the basis for much of the law school's request. The fact that some legislators found the provision for a law library to be a nonessential element of the building plan¹⁶² serves merely as a caricature of a pervasive and continuing problem. Time and again the law school would be reminded that it must explain not only its building needs, but also the concept of legal education on which those needs were based.

In preparing for the 1971 session, two actions were of primary importance. The law school was first faced with the need to comply with the legislature's mandated reduction. And second, an architect had to be selected to design the building from the revised proposal.

Given the language of the legislative appropriation, a reduction in the law school's proposal, and therefore in its program, was essential. If the language of the appropriation was literally binding, the planning funds could only be used to plan an \$8 million building—one that would be incapable of accommodating even the law school's existing program. Either the law school had to go back to the drawing board to formulate a new plan for its future using the \$8 million figure as an absolute limitation, or it could take the legislative language as a symbolic, but not literal, directive to effect significant reductions in the scope of the plan. Obviously, the law school's strong preference was to adopt the latter interpretation.

There were several reasons for taking this position. The first of these was set forth in a memorandum generated and circulated within the law school that noted that, in contrast to the literal limitation of the appropriation language, there was a countervailing tradition of administrative discretion in matters of building appropriations. The memorandum concluded that the language was not a legal prohibition on the discretionary power to plan for a larger facility. Second, there was reason to believe that when the legislature was fully apprised of the importance of the law library to the new building proposal, it would agree that the 1969 figure had been too small and that a larger amount was appropriate. Indeed, the \$8 million amount was quite generous for a law building that did not contain space for a law library. Finally, there was the strongly held conviction that a facility constructed within the \$8 million budget constraint would amount to a death sentence for quality legal education at the University of Minnesota.

The law school thus decided to reduce but not gut its proposal, and began the arduous process of consolidation and sacrifice. First,

162. See sources cited in note 161 *supra*.

the two-phased proposal of 1969 was collapsed into one legislative request. To make that request smaller, sacrifices were made. The library (comprising over one-half of the space in the proposal) was particularly hard-hit as the small reading room was deleted, stack capacity was reduced from 600,000 to 500,000 volumes, and study space for 100 students was eliminated, leaving the library with seating for seventy percent of the projected enrollment.¹⁶³ Also eliminated were ten offices intended for visiting faculty, a jury room for the moot court, the large auditorium, and the offices of the Center for the Study of Law in Society.¹⁶⁴ Finally, further reductions were achieved through design refinements suggested by the architect. In total, the spacial requirements of the proposed building were reduced by over twenty percent, from 228,000 to 173,500 assignable square feet.¹⁶⁵

Inflation, however, erased almost all of the gains made by these cutbacks. In fact, the new proposal was projected to cost just seven percent less than the 1969 proposal, even though it represented a building containing about twenty-five percent less space. The 1969 proposal for a \$15 million building would have been inflated to over \$18 million if resubmitted in 1971.¹⁶⁶ As it was, the law school's new proposal for the approaching legislative session was priced at \$13.9 million.

With the basic reductions already made, there was at least a plan for the architect to work with. But the selection of an architectural firm to undertake the project was itself an important task. Consequently, when the University established a building committee shortly after the 1969 session, law school representatives were quick to voice their desire to participate with the committee in the selection of an architect.¹⁶⁷ Several law school faculty and student representatives were added to the University committee,¹⁶⁸ and they partici-

163. See Law School Building Program (1969 and 1971 compared) (Apr. 3, 1970) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

164. See *id.* Because the new law school building was to be constructed adjacent to Willey Hall, a large lecture hall that also contained ample eating facilities, the law school was able to eliminate from the proposal its plans for a large lunchroom and lecture hall within the new building.

165. See Fact Sheet, *appended to* Memorandum from Don McInnes to Dean William B. Lockhart and Vern Ausen (May 5, 1970) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

166. See Letter from Dean William B. Lockhart to Regent John Yngve (Mar. 14, 1970), *supra* note 161.

167. See Letter from Professor Robert A. Stein to Vice President Laurence R. Lunden (July 15, 1969) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

168. The University's Building Committee was chaired by D. Eric Wheeler of the Physical Planning Office, and its law faculty members included Dean Carl A. Auer-

pated fully in the selection of the architect and all subsequent decisions affecting the law school building design and construction. Finally, in the winter of 1971, the project was awarded to the architectural firm of The Leonard Parker Associates of Minneapolis.

With the architect retained, attention was turned to the design possibilities of the project. New buildings expressing a variety of functional and aesthetic approaches to common problems in legal education had recently been constructed at a number of leading law schools. To learn from their successes and failures, architect Leonard Parker, the author, and law librarian Bruno Greene made visits to the University of Chicago Law School, Northwestern University Law School, the University of Pennsylvania Law School, Harvard Law School, and Boston University Law School. Another trip was subsequently made to newly constructed law school buildings in the western states, visiting Southern Methodist University Law School, the University of Washington Law School, and Stanford University Law School.¹⁶⁹ The comments of hosting faculty members and the opportunity to see different solutions to common design problems proved invaluable. Several of the successful features of these buildings were incorporated in the Minnesota design.¹⁷⁰

With the proposal refined and the design underway, the 1971 legislative effort began in earnest when the law school presented its proposal to the Legislative Building Commission in June 1970. The Commission again would make the preliminary determination on the proposal, and the law school's proponents worked hard to ensure that the misunderstandings of 1969 were not repeated. To that end, they emphasized the importance of the law library to the school and stressed that over fifty-eight percent of the building's area was de-

bach, Associate Dean Robert F. Grabb, Professor John J. Cound, Professor George S. Grossman, and Professor Robert A. Stein. Its student membership varied from year to year, but Margaret Flicker and John Hoeft served during the time many critical decisions were made. Also on the committee was Paul E. Kopietz, Director, Engineering and Construction Department. See Program, University of Minnesota Law School Building Ground-Breaking Ceremony (Feb. 19, 1976) (on file at the *Minnesota Law Review*).

169. Interview with George S. Grossman, Director of the Law Library, University of Minnesota Law School, in Minneapolis, Minnesota (Apr. 2, 1979).

170. For example, the design of the new U-shaped classrooms was based on the new classrooms at Harvard Law School, while the design of the seminar rooms and the study carrels was modeled after those at the University of Chicago. The visits to other schools also helped Minnesota avoid certain unsuccessful approaches that had been tried elsewhere. For example, the high-rise architectural design of some law schools was considered to be inefficient for the operation of those schools and that concept was therefore rejected. Elsewhere, the lack of reading room space was felt to have been a mistake that Minnesota should avoid.

voted to the library's use.¹⁷¹

The law school also again mobilized its lobbying effort. Alumni and friends of the law school had greatly assisted the 1969 campaign, but in 1971 they were to do even more. The law school, perhaps concerned about keeping a low profile in its first legislative effort, was more willing to muster its forces the second time around. Minneapolis attorney (and subsequently Chief Justice of the Minnesota Supreme Court) Robert J. Sheran, then president of the Law Alumni Association, presented the school's case to the Board of Governors of the Minnesota State Bar Association (MSBA) and obtained its support. An MSBA resolution endorsing the law school building proposal was then sent to all of the Building Commission members.¹⁷² Later, Sheran and Lockhart planned a lunch with lawyers "well versed in the make-up of the house and senate" to gather information "for use in making assignments of responsibility to lawyers."¹⁷³ In an effort to coordinate the campaign, lists of legislators were passed out and lawyers were asked to contact those with whom they might be persuasive. As in 1969, the legislative strategy was to inform lawyers as the concerned constituency so that they could inform their legislators.

Given the nature of the law school lobbying effort, the support of the legal community was vital. But by 1971, there were indications that, at least in some quarters, this support was not as strong as might have been desired. In part this was a response to the difficult public relations effect of the law school's turning away so many qualified Minnesota applicants. As Lockhart had predicted in 1967,¹⁷⁴ the annual denial of admission to hundreds of qualified Minnesotans generated a good deal of anti-law school sentiment that could not easily be counterbalanced by explanations of the law school's plight. Those whose son, daughter, or other relative had been rejected by the law school understandably felt little motivation to support the law school's campaign. When these people were Regents, legislators, or

171. See Consolidated Legislative Building Request, *appended to* Letter from Vernon L. Ausen to Dean William B. Lockhart (Oct. 26, 1970) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean William B. Lockhart to Rep. C. A. Johnson (June 29, 1970) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

172. See Letter from Dean William B. Lockhart to Associate Dean Robert F. Grabb (Oct. 1970) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

173. Letter from Dean William B. Lockhart to Robert J. Sheran (Jan. 8, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

174. See Letter from Dean William B. Lockhart to President Malcolm Moos (Sept. 15, 1967), *supra* note 51.

alumni of the school,¹⁷⁵ the effects of their disenchantment were significant.

Another emerging problem for the law school lobbying effort was convincing legislators that there was a need for an increased enrollment. The 1969 legislature had apparently adopted the law school's position that an expansion of the enrollment would help to satisfy an existing shortage of lawyers.¹⁷⁶ By 1971, however, concern had emerged over whether more lawyers could be accommodated in the state. Certainly, a catalyst in this emerging controversy was the debate in the legislature and the legal profession over the effects of the proposed no-fault insurance legislation then under consideration.¹⁷⁷ It was difficult to predict the effect of this proposed legislation on the bar, but many believed a consequence would be a reduction in litigation and the need for lawyers' services. Added to this concern were fears that the generally troubled performance of the national economy might negate the need for expansion in any field. As a result, questions as to the future market for new lawyers received an increasing amount of attention.

A third challenge to the law school's 1971 lobbying effort, and one that was instructive in improving the law school's public relations problems, was the loss of support of one of the University's regents, Lyman Brink. In April 1971, while the law school's proposal was still under legislative scrutiny, Regent Brink, until then a supporter of the school, wrote to Dean Lockhart: "I become increasingly disturbed by the faculty and student body of the University of Minnesota Law School, and I do this first as a taxpayer of the state and secondly as a lawyer."¹⁷⁸ As sources of his disillusionment, Regent Brink cited

175. See, e.g., Letter from Dean William B. Lockhart to Regent Lyman A. Brink (Jan. 29, 1971), concerning an applicant in whom the Regent was interested ("I regret that I must inform you that he falls, frankly, far short of our minimal standards.") (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean William B. Lockhart to Rep. C.A. Johnson (n.d.), a member of the Legislative Building Commission, apologizing to Johnson for sending "only a cold and formal card" in response to his inquiry about the application of a particular individual (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

176. See, e.g., *A Message of Utmost Importance to Every Member of the Bar of Minnesota*, *supra* note 155; Notes of Dean Lockhart's Presentation to the Legislative Building Commission (June 27, 1968) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

177. See, e.g., Law School Building Project: Update Report (June 23, 1972) Appendix IV (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) [hereinafter cited as Update Report].

178. Letter from Regent Lyman A. Brink to Dean William B. Lockhart (Apr. 17, 1971) (on file with the Law School Building Papers, University at Minnesota Archives, Minneapolis, Minnesota).

reports that the law school had invited the controversial attorney, William Kunstler, to give a lecture; that the law school had endorsed what Brink felt was a pro-no-fault insurance conference; and that the *Minnesota Law Review* had published an article on no-fault legislation by one of its leading proponents, Senator Jack Davies. Although the specific concerns Regent Brink raised could be directly addressed,¹⁷⁹ it was more difficult for the law school to respond to the general disenchantment that was the basis of the criticisms of Regent Brink and that was shared by others.

Though the support of other Regents was enlisted to offset the effect of Brink's position,¹⁸⁰ his disenchantment was representative of a significant portion of lawyers and laymen throughout the state. Perhaps because of the highly visible roles of lawyers and law schools in the resolution of significant social conflicts, public opinion of the legal profession has often related to public sentiment on other issues. For example, public attitudes about the regulation of obscenity undoubtedly influenced public opinion of lawyers and legal educators who, like Dean Lockhart, argued for constitutional protection of this material.¹⁸¹ In times of social discord, there may be a decrease in public satisfaction with the legal profession, the group to whom responsibility for dispute resolution is largely delegated. Specifically, a by-product of the public discord of the late 1960s and early 1970s appeared to be a decrease in the public esteem of the legal profession.¹⁸² Relatedly, enthusiasm for public support of legal education also may have declined.

Another and perhaps the most serious challenge to the law school's 1971 lobbying effort arose from the amount and attractiveness of competing claims for capital appropriations. A bumper crop of legislative requests was produced in 1971. Yet, due to stringent fiscal constraints, it yielded a very small return in legislative appro-

179. Actually, the invitation to Kunstler had been issued by the Law Forum, a student group, and had earlier been retracted; there had been no law school involvement in the no-fault conference, held at the Continuing Legal Education Center; and the editorial policies of the *Minnesota Law Review* were not within the control of the law school's administration. See Letter from Dean William B. Lockhart to Regent Lyman A. Brink (Apr. 17, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). Although not cited, an additional factor in the Regent's disenchantment with the law school was its denial of admission to an applicant in whom he had expressed an interest. See note 175 *supra* and accompanying text.

180. See, e.g., Letter from Dean William B. Lockhart to Rep. C.A. Johnson (Apr. 23, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

181. See Stein, *The Lockhart Years*, *supra* note 19, at 815-17.

182. See generally *Those #*X!! Lawyers*, *TME*, Apr. 10, 1978, at 56.

priations. In total, University capital requests amounted to \$183 million, while appropriations amounted only to \$41 million.¹⁸³ And among those approved were the high-priority appropriations for the University's rapidly expanding health science facilities. A generous federally-funded matching program ensured that state funds appropriated to these facilities could buy more than funds allocated to other units in the University. Consequently, the legislature found these requests practically undeniable. Unfortunately for the law school, its needs arose at the same time that external factors were making health science facilities an extremely good buy.

The law school request was, however, the University's highest non-health science priority on the Twin Cities campus, and the legislature did not appear totally unsympathetic. Early in the 1971 session, for example, the Legislative Building Commission recommended that an appropriation be made for more detailed planning than that authorized by the 1969 appropriation.¹⁸⁴ Although the law school's 1971 request had been for a full construction appropriation, the Commission's planning fund recommendation at least served the purpose of again endorsing the new building proposal.¹⁸⁵ Additionally, the recommendation brought the proposal before the entire legislature. There, the law school hoped to be able to convince the legisla-

183. See *University Regents Reject Expansion Plans*, St. Paul Dispatch, Aug. 10, 1972, at 10, col. 1.

184. The planning authorized by the 1969 appropriation continued during the 1971 legislative consideration of the law school proposal. Anxious that no time be lost on the project, the law school directed its architects to go beyond the preliminary planning stage to the preparation of working drawings. This, however, would cost more than the \$80,000 appropriated in 1969. An additional \$25,000, needed to continue the planning, was contributed by law school alumni.

185. The Commission recommended proceeding with the project, but its means of expressing that decision created considerable anxiety among the law school's proponents. Instead of recommending planning funds for the proposed \$14 million project, the Commission report recommended planning for a building with construction costs of \$10 million. The law school faculty, which had already slashed its building plans in order to reduce its 1969 request to \$14 million in 1971, feared that the recommendation called for yet another round of drastic cuts. These fears, however, were the product of a misunderstanding—the Commission's \$10 million construction cost figure was not necessarily inconsistent with the \$14 million total project cost. Unfortunately, the fact of essential agreement was not discovered until after the law faculty had prepared a long statement detailing the consequence of a \$10 million ceiling on the law building proposal—consequences that would have compelled the school to plan for a student body of only 600, or to strip the school to its bare essentials and operate a "substandard" school for 1,000 students. See *Consequences of a Legislative Appropriation of \$10 million for New Law School Building* (Feb. 18, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); *Statement on Law School to the House Appropriations Committee Building Division* (n.d.) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

tors of the immediacy of the need and to secure the full construction appropriation.

But the sledding, never easy for the law school project, was particularly rough for the rest of the 1971 session. The recommendations of the Legislative Building Commission were not dispositive; all the issues it faced and decided were argued again and redecided by the legislative committees involved. Although the Commission had endorsed the concept of a new building on the West Bank that would accommodate 1,000 students and 66 faculty members, the legislature was not precluded from reevaluating each of those judgments. Of particular interest to legislators in 1971 was whether an addition to Fraser Hall might not be sufficient for the law school's needs. Fearful, perhaps, that rapid expansion on the West Bank would leave the East Bank mall deserted, and hopeful that it would cost less, to make additions than to build an entirely new facility, the legislators wanted to explore an East Bank solution to the law school's recognized need. Consequently, the legislators approved a "sum sufficient" appropriation that authorized the Legislative Building Commission to release to the University Regents the amount it determined to be necessary for working plans and drawings, but only "in the event that [the Commission] determined in favor of constructing a new law school building or an addition to the present building."¹⁸⁶ A clear mandate

186. Act of June 4, 1971, ch. 963, § 8(2)(8), 1971 Minn. Laws 2104.

The proposal for an addition to Fraser Hall was not new. In 1956, two large additions had been made to the south and west of the original structure, which itself dated from 1927. See Stein, *The Pirsig Years*, *supra* note 104, at 319-20. Further expansion on the site was considered and rejected by the law school when it was determined that Fraser Hall could not structurally support any upward development. See Letter from Dean William B. Lockhart to Assistant Vice President Stanley B. Kegler (Apr. 20, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). This meant that only lateral expansion was possible, and there simply was not sufficient room for that. Bounded on three sides by roads, the only space available was to the south; where Temporary North of Mines, a wooden building from the World War II era, was located between the law school and Appleby Hall. Even there, only 10,000 square feet of ground space was available. As Dean Lockhart wrote to Assistant Vice President Kegler, to provide the additional 112,500 square feet that the law school needed on this small space would require a "narrow 18 story building which among other things, would surely be an architectural monstrosity." *Id.*

Nevertheless, the legislature was not sure that the possibilities for expansion of Fraser Hall had been fully explored. It was concerned, with some justification, that the only body that had investigated present site expansion was the law school itself, which had obvious motivations for preferring a new building over remodeling. It was concerned also with the apparent lack of a campus-wide plan for construction and building use. Wilson Library, on the West Bank, had replaced Walter Library, which stood across the street from Fraser Hall, as the University's main library. If the law school also moved, that would leave two adjacent buildings on the East Bank which no longer served the purposes for which they had been designed.

to the Commission to restudy the proposal, this legislation was highly discouraging to the law school proponents. Simultaneously ensuring that full funding could not possibly be achieved until 1973, and that the proposal would be subjected to still another round of discussion before even planning funds would be released, the 1971 legislation was a severe blow to the law school's hopes.

c. Making the Case to the Legislative Building Commission

Just how much delay and frustration the law school proposal was yet to see could not have been predicted as the 1971 legislature adjourned early that summer. As it turned out, hopes for a new building were beginning a two-year slide to a nadir from which some felt revival would be impossible. For a year and a half, the Building Commission restudied the proposal, returning time and again to the issues of whether the future demand for lawyers would justify the law school's enrollment expansion plans and whether any East Bank addition was possible. At the same time, intra-University problems began to develop. Some individuals in the University central administration adopted an adversarial posture toward the proposal and, at one point, almost caused it to be removed from the University's 1973 priority list. Finally, with no decision yet from the Building Commission, the 1972 elections occurred and the Democratic Farmer-Labor party rolled to victory in both houses of the Minnesota Legislature, marking the first change in political control of both houses in over a century. With new legislative leadership, the Commission's recommendations were of little influence and the law school's four years of legislative effort were back to the starting point.

Yet, events did not begin so bleakly after the 1971 legislature adjourned. In fact, the first signs were quite hopeful. The Building Commission, meeting in September 1971, adopted the motion of Representative C.A. (Gus) Johnson, one of the law school's most devoted friends, to create a law school subcommittee to speed study of the project.¹⁸⁷ With the Commission Chairman, Representative Delbert Anderson, who was also friendly to the proposal, appointing himself chairman of the subcommittee, there was hope of reaching a decision by the end of the year.¹⁸⁸ In November, the Commission came to inspect the law school and was presented with yet another in a series

187. See Memorandum from Donald K. McInnes to Dean William B. Lockhart (Sept. 14, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

188. See Letter from Dean William B. Lockhart to John Padden (Feb. 22, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

of documents prepared to explain the need for a new building.¹⁸⁹ Significantly, the report admitted for the first time that the inadequacies of the current facilities were not just threatening the school's future, but were seriously hurting the school currently. "As an overall judgment, it must be said that in the years before a new Law School building is available the State must necessarily conduct a holding action in legal education. Substantial growth and improvement is [sic] impossible."¹⁹⁰

Also notable was the report's somewhat expanded treatment of the future need for lawyers. While the law faculty continued to argue that the rising demand for legal education alone justified the law school's expansion plans, the report took more care than had previous documents to point out the successful placement record of the school's graduates and the several new areas in which lawyers would be needed in the future. It concluded that the school found itself "forced to contend with tides rising from both sides. The applicants and jobs are available. All that is required is a quality legal education to train for those positions."¹⁹¹

But another report, ironically produced on the same day but in a different part of the University, came to a somewhat different conclusion. Working in the University's planning department, economist Pat D. Meagher authored his first of several controversial appraisals of the law school proposal.¹⁹² Meagher's thesis, essentially, was that Minnesota was currently meeting its economic need for lawyers and that one could expect a surplus of law graduates by 1975. The market for lawyers, he predicted, was going soft. While it is not clear just how widely distributed this report was, it certainly served the purpose of promoting discussion when it became available to the law school proponents in the early part of 1972. In the short and adversarial exchange that followed, both sides pointed out the conceptual defects of the other's analysis,¹⁹³ with the probable net result of demonstrating that there were simply too many factors involved, many of which were intangible, to create a reliable formula of prediction.

Commission members seemingly shared Meagher's skepticism about the strength of the future market for lawyers' services. At least

189. Summary of the Need and the Planning for the New Law School Building at the University of Minnesota, *supra* note 1.

190. *Id.* at 5-6.

191. *Id.* at 4.

192. P. Meagher, A Primer on the Economics of the Legal Profession and the Implications for Minnesota (rough draft) (Nov. 1, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

193. See Letter from Pat D. Meagher to Professor Allan H. McCoid (Mar. 7, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

three times in the succeeding months, central administration officials working with the Commission wrote to Dean Lockhart asking for a better explanation of why the law school should produce more lawyers.¹⁹⁴ The Commission was not satisfied with the law school's emphasis on the rising demand for legal education as sufficient justification for the expansion, but hard data on the future market for legal services was extremely difficult to generate. The law school continued to point to the placement success of its recent graduates and to the belief that improvements in the delivery system for legal services would increase the need for lawyers by serving a large new market.¹⁹⁵ It emphasized that the historically unmet need by low and middle income persons for legal services would continue to increase as government and private groups devised ways to provide these services. Finally, the law school noted that the expansion planned was not substantial—producing only 100 more lawyers annually.

The other major focus of the Commission's study was the possible East Bank accommodation of the law school's needs. While it was agreed that expansion in the area occupied by the building known as Temporary North of Mines would not satisfy the law school's requirements, there was interest in linking Fraser Hall with Appleby Hall just to the south of Temporary North of Mines. In November 1971, The Leonard Parker Associates, the architects retained to design the new building, were given the additional assignment of studying "the possibility of locating the new Law School in the Fraser-Appleby area."¹⁹⁶ After examining the remodeling alternatives, The Leonard Parker Associates concluded that no remodeling or expansion alternative could satisfy the law school's programmatic requirements as cost-effectively as the new building proposal. Despite the architect's analysis and regardless of the fact that Appleby Hall was already being used by another college, interest in the remodeling or expansion idea continued.

194. See Letter from Vice President Stanley B. Wenberg to Dean William B. Lockhart (Feb. 22, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) ("The thing on which the Commission members feel they don't really have much evidence is how great the marketplace is for law school graduates, and what specific means there are for measuring it."); Memorandum from Rodney Briggs to Dean William B. Lockhart (Nov. 18, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Memorandum from Donald K. McInnes to Dean William B. Lockhart (Nov. 9, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

195. See, e.g., Update Report, *supra* note 177, at 22-27.

196. Minutes of the Law School Building Advisory Committee (Nov. 19, 1971) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

It was while both of these issues were still being debated in the Commission, and while the law school was preparing a new proposal for the next legislative session, that Meagher's second and perhaps most controversial report was issued.¹⁹⁷ This time evaluating the law school's proposal as a whole, Meagher stated, "The law school request is based, to date, on highly qualitative arguments, when in fact, the decision to build or expand or not is a highly quantitative one. To me," he concluded, "something seems highly amiss in this state of affairs."¹⁹⁸

To the law faculty members who, since 1965, had worked first on the Decades Ahead report, then on the Building Committee Report, and finally through two full legislative considerations of the proposal, Meagher's conclusion was incredible. That the report should have emanated from within the University central administration was even more disheartening. That many of the questions it raised showed such a naïveté regarding the proposal's history merely added to the law faculty's ire. The law school quickly issued responses that attempted to meet Meagher's questions and mitigate the damaging impact of his conclusion.¹⁹⁹

For a time, it seemed as if the law school had successfully countered Meagher's effort. Indeed, in April 1972, Meagher issued two papers that seemed to express a new and more cooperative tone.²⁰⁰ In the first, he analyzed the need for the additional space proposed in the West Bank building—one of the issues he had raised in his previous report—and found it justified, in that most of the increase was devoted to enlarging the student study space.²⁰¹ In the second, he offered some observations to the Law School Building Committee as

197. P. Meagher, An Evaluation of the Proposed Law School Expansion and Legislative Building Request (Mar. 10, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

198. *Id.* at 6-7.

199. See, e.g., Statement by Bruno H. Greene, Director of the Law Library, in Answer to those Criticisms Raised by Pat Meagher in the Evaluation of March 10, 1972, which Relate to the Law Library in the New Law School Building (n.d.) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); P. Meagher, Demand for Lawyers and Legal Services (n.d.) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

200. See P. Meagher, The Supply and Demand for Lawyers and the Market for Manpower with Training in the Law (Apr. 17, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); P. Meagher, An Evaluation of the Additional Space the Proposed West Bank Law Building Would Provide (Apr. 12, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

201. See P. Meagher, An Evaluation of the Additional Space the Proposed West Bank Law Building Would Provide, *supra* note 200.

to what it might stress and develop in preparing its formal 1973 request. Noting that the future demand for lawyers was still a difficult problem, he promised to develop some manpower data for the committee to use.²⁰²

In the same month, however, Meagher wrote yet another report, suggesting one more possible alternative, one that was to prove a major stumbling block to the law school proposal in the 1973 legislative session. His proposal, which still sought the elusive East Bank solution to the law school's dilemma, shifted the remodeling/expansion focus from Appleby Hall to Walter Library.²⁰³ Initially, this suggestion received little support. Milton Trapold, head of the University Office of Space Utilization, analyzed the proposal and found it "not worth further consideration." Although Walter had more than enough library space for the school's needs, he noted that it lacked classroom, courtroom, and office space. Further, it was already heavily utilized, and "what was displaced from Walter could not be easily relocated in Fraser." "In short," Trapold concluded, "you're not going to solve the law school's problems without some new construction somewhere so I recommend we cease further consideration of the Meagher proposal and concentrate our energies on a more realistic alternative."²⁰⁴ But the proposal, temporarily scuttled, would later assume much greater prominence.

In the meantime, the Law School Building Committee was devoting itself to preparations for the 1973 legislative session. With the Building Commission still undecided about the release of the law school's planning funds, law school proponents had little choice but to take an optimistic view and continue to plan for full project funding in the 1973 legislature. Within the University, things seemed to be proceeding well as the Regents made the new law building their highest priority request for new construction funds on the Twin Cities campus.²⁰⁵ In June 1972, the Law School Building Committee pre-

202. This he did, and a rough draft of *The Supply and Demand for Lawyers and the Market for Manpower with Training in the Law*, *supra* note 200, appeared as an appendix to the Law School Building Committee's Review of the Building Project, issued in April 1972. Meagher's conclusion was, "For Minnesota at least, and perhaps the nation, the situation between now and 1980 is likely to be one of a [soft] market, but not one the bottom is falling out of." *Id.*

203. See P. Meagher, Draft: A New Outline of a Plan to Accommodate the Law School with Existing Buildings (June 23, 1972, replacing draft of April 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

204. Memorandum from Milton Trapold to Hugh Peacock (May 11, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

205. See Regents' Report to the Minnesota Legislative Building Commission: 1973 Building Requests (June 21, 1972) (on file with the Law School Building Papers,

pared an "Update Report" on the project²⁰⁶ and readied itself for yet another presentation to the Legislative Building Commission. While much in the report repeated earlier statements, the changes in its emphasis were illustrative of how acute both the need precipitating the proposal and the problems facing it had become.

One of the most notable changes was the increased emphasis on the inadequacy of Fraser Hall for the existing program.²⁰⁷ This reflected a concern that the debate over the enrollment size of the new law school had obscured the law school's basic position, that the old building was inadequate for a law school of any size. To the faculty, the fundamental issue in the new building proposal was the provision of better facilities; the size of the new building was secondary. Consequently, the report highlighted the fact that the law library was well on its way to paralysis as more and more of the collection was being sent into storage (or to subbasement caches that were the functional equivalent of storage) to make room for the more essential recent acquisitions.²⁰⁸ It cited again the recruitment difficulties presented by faculty offices that were substandard cubbyholes buried in the stacks or, even worse, placed outside the law school.²⁰⁹ Also emphasized was the fact that the school stood in clear violation of the minimum accreditation standards of the Association of American Law Schools (AALS) by providing study spaces for only forty-three percent of its student body as compared with the required sixty-five percent.²¹⁰ And finally, it recounted again the effects of congestion throughout the school, the inadequacy of the large classrooms even for the purposes for which they were designed, the absence of smaller classrooms to accommodate newer teaching techniques, and the lack of facilities for important extracurricular programs.²¹¹

Having underscored the inadequacies of the current facility, the report then presented the new building proposal, emphasizing first the programmatic basis for the designed space and second, the extent of the sacrifices already made. With the lesson of the 1969 session in mind, the Committee set out in detail the function of the important facilities in each area. For example, it explained that the large number of study carrels in the proposal reflected the planned increased emphasis on individual student projects;²¹² that the U-shaped class-

University of Minnesota Archives, Minneapolis, Minnesota).

206. See Update Report, *supra* note 177.

207. *Id.* at 2.

208. *Id.* at 2-3.

209. *Id.* at 3.

210. *Id.*

211. *Id.* at 3-4.

212. *Id.* at 6.

rooms reflected the interactive mode of instruction used,²¹³ and that the number of faculty offices was based on the desired student-faculty ratio of 15 to 1.²¹⁴

Only after detailing the inadequacy of Fraser Hall and the programmatic advantages of the proposed new building did the Committee turn to the consuming problem of its report—the size of the new law school. Devoting over two-thirds of its writing to this issue,²¹⁵ the Committee indicated the nature of the school's dilemma when it addressed not only the question of why the student body should be no smaller than 1,000 students, but also the question of why it should be no larger. Since it had originally maintained that the law school should expand to a 1,000 student enrollment in order to meet the demand for legal education, the law school now had to contend with the fact that the current demand from qualified students could just as easily fill a school of 2,000 or 3,000 students. The dramatic increase in law school applications, which had just begun as the Decades Ahead report was being written, had accelerated rapidly in the subsequent years. There had been over 1,726 applicants for the class that would begin in the fall of 1971, of which more than 1,000 were qualified to study in the law school.²¹⁶ For the 250 students admitted that fall, the median projected first-year grade average indicated a student of "law review calibre."²¹⁷ So, if the faculty was interested in meeting the demand for legal education, why hadn't it revised its desired enrollment even higher?

To this query the Committee responded by noting that there were other factors that independently supported the 1,000-student figure. Of the nation's 155 law schools in 1971, only eight were "operating *full-time* law school programs enrolling more than 1,000 students."²¹⁸ This seemed to indicate a consensus not to exceed the 1,000 student figure, probably in deference to the difficulty of managing and maintaining a program of quality legal education in a larger operation. An expanded student body would necessitate more faculty and, should that body exceed sixty or seventy members, the problems of self-government and faculty recruitment would become extremely

213. *Id.* at 7.

214. *Id.*

215. *Id.* at 26-27.

216. See Lockhart, *Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1970-72, at 85 (1972).

217. Memorandum from Dean Carl A. Auerbach to Vice President James Brinkerhoff (June 21, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

218. Update Report, *supra* note 177, at 11.

difficult.²¹⁹ Further, implicit in a larger school would be a depersonalization that would threaten the feeling of community essential to developing standards of quality and professionalism in the school.²²⁰ In short, enlarging the school beyond 1,000 students would generate risks threatening the quality of the school's program.

The reverse question then presented itself: Why expand at all? Again the Committee stated the law school's position that expansion was justified by the fact that more qualified applicants were seeking legal education than the law school was admitting.²²¹ It was not the law school's role to regulate the supply of lawyers by arbitrarily limiting the number of students trained.²²² Instead, the Committee argued, it was the law school's responsibility to meet that demand, at least up to the law school's capacity to provide a quality legal education. In this, the Committee was supported by a recently adopted policy of the American Bar Association and a recent *American Bar Association Journal* editorial. The editorial, after noting the rapid increase in law school applications, concluded, "The law schools have been placed in the position of making the first response, and that response has been in the best tradition of legal education—to accept as many qualified students as facilities will accommodate."²²³

If the Committee was confident that the school should do what it could to meet the demand for legal education, it also had no doubts that the demand would adequately support a law school of 1,000 students. Though the reasons for the current explosion in applications were not clear, somehow law had become, in Leon Jaworski's words, "the glamour profession of this decade."²²⁴ Even if the glamour of the moment faded, the Committee did not expect the law school to have excess capacity, as applications could fall off by fifty percent and still more than exceed the school's proposed capacity.²²⁵ It seemed that the 1,000-student enrollment allowed for such a large margin of error in projecting future application levels that it was

219. *Id.* at 13.

220. *Id.*

221. *Id.* at 14.

222. *Id.*

223. 58 A.B.A.J. 270-71 (1972), quoted in Update Report, *supra* note 177, at 19.

The editorial went on to say:

But the onus of the response cannot rest on the law schools alone; it is the responsibility of the entire profession.

Whatever the response, it would be unwise for it to be one grounded on the economic interest or protection of those who are already members of the legal profession.

224. Jaworski, *President's Page*, 58 A.B.A.J. 325 (1972), quoted in Update Report, *supra* note 177, at 17.

225. See Update Report, *supra* note 177, at 17.

highly unlikely that the school would be unable to fill a first-year class of 360 qualified students.

The report then moved to the issue of the future demand for lawyers. From the Committee's perspective, this question was relevant only to the extent that it would influence the number of people desiring a legal education. Yet it realized that, to many others, this was an issue of central significance.²²⁶ It would be an inefficient use of the state's educational resources to provide facilities to educate more lawyers than the state really needed. Further, some feared that increasing the number of lawyers would damage the legal profession by making it too competitive. Since at least the 1920s, unethical practices and a decline in the status of the legal profession had been linked to an overabundance of lawyers,²²⁷ and fears that these problems might recur may have kept some from endorsing a free market approach to determining the appropriate number of lawyers. Finally, there were those whose concern over expansion in the supply of lawyers was motivated by economic self-interest:²²⁸ the more lawyers, the lower the value of legal services. Whatever their motivations, there were many who were keenly interested in the issue.

Again, the law school proponents emphasized that the growth in the market for lawyers was impossible to predict but that there were a number of optimistic signs of increased future demand. They used Meagher's study to show that, even if one looked only at the traditional marketplace, the need for lawyers would hold up fairly well through the 1970s.²²⁹ They stressed that new developments would be likely to increase the need. With legal services reaching more people and with legal training becoming more valuable in nonlaw positions, there seemed little reason to fear that the law school's expanded enrollment would flood the Minnesota legal market. The proponents sought to emphasize this important point in ten pages of detail.²³⁰

Finally, the Committee turned to discuss briefly the consequences of error in the decision to expand. Noting that a building housing 1,000 students instead of the existing 750 would cost only fifteen percent more, not twenty-five percent more,²³¹ the Committee warned that it would be wasteful in the extreme to underestimate the school's optimal size. An oversized facility could easily be used for

226. See *id.* at 19.

227. See Stein, *The Fraser Years*, *supra* note 78, at 1182 & n.110.

228. See Letter from Senator Walter F. Mondale to Dean Carl A. Auerbach (Jan. 30, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Update Report, *supra* note 177, at 19.

229. See Update Report, *supra* note 177, at 20.

230. *Id.* at 17-26.

231. *Id.* at 27.

other University purposes; an undersized one would be expensive to enlarge and would stifle the improvement of legal education.

As the Committee's report emphasized those issues that the law school's proponents perceived to be important, a discussion of the studied alternatives to the new building proposal was significant by its absence. Perhaps the Committee believed that after the Fraser-Appleby study this was a dead issue. Yet, in light of subsequent developments, it is clear that the issue was very much alive.

d. A Hot Summer—1972

The Update Report of June 1972 was the last such report prepared during the administration of Dean Lockhart. With his resignation effective July 1, 1972,²³² Acting Dean Carl Auerbach assumed the responsibility of chief advocate of the law school proposal. In the summer of 1972 this was no easy task.

One of Acting Dean Auerbach's first assignments was to present the Update Report to the Legislative Building Commission in late June. At the Commission's summer hearings, the first step in the 1973 legislative consideration of the capital request, the law school again sought the full construction appropriation. Yet, at the same time as the Commission was hearing the 1973 request, it was still considering what action to take under the 1971 "sum sufficient" legislation, which authorized release of planning funds for working drawings if the Commission should decide in favor of a new or remodeled law school building.²³³ With the study of alternatives continuing, the Commission had not yet released any funds. Consequently, the law school's position before the Commission was far from assured.

Far worse, however, was the position the school found itself in before the Regents of the University a month later. In the 1971 legislative session, the Regents had requested a full construction appropriation for the law school. It was their second construction priority on the Twin Cities campus in 1971 and, at least through July 1972, the request was in a similar position for 1973. But in August 1972, the University Vice Presidents made a bombshell recommendation: that the law school's \$15 million proposal be dropped from the University's 1973 legislative request. Instead they recommended a request for \$400,000 in planning funds to design a \$10 million law school building.²³⁴ Motivated by a desire to present a more realistic building

232. See *Professor Auerbach to Serve as Acting Dean*, *supra* note 4.

233. See note 186 *supra* and accompanying text.

234. See Summary of Regents' Report to the Minnesota Legislative Building Commission for Final Regents' Review, at 2 (Aug. 9, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

request than that presented to the 1971 legislature, this action, taken without consulting either the law faculty or the Dean, seemed catastrophic to the law school's proponents.

Consequently, the law school sought to make its case to the Regents when the matter came before them in August 1972. As many of the faculty as could be gathered on short notice in the summer months issued a letter to the Regents predicting that dire consequences would follow if the proposed action were taken.²³⁵ They noted that a reduction in the law school's priority status would not only sentence the school to a still longer term in an inadequate facility, but it would also demonstrate a lack of University support for the law school that would have devastating effects on faculty recruitment and retention. Until then, the law school, in its negotiations with prospective dean candidates and faculty members, could at least point to the support of the University central administration as an optimistic sign mitigating the school's obvious physical facility deficiencies.²³⁶ But if the Vice Presidents' recommendation were adopted, the law school would have little to offer as encouragement for retention of its existing faculty or for recruitment of new faculty members. This was particularly true with respect to the recruitment of a new dean; three candidates for the deanship already had told the school that they were not interested in the position.²³⁷

The faculty's letter, however, was merely a prelude to the remarks of Acting Dean Carl Auerbach. Characteristically direct, he termed the Vice Presidents' recommendation "profoundly mistaken; made without any apparent appreciation of [the programmatic implications]."²³⁸ Underscoring the fact that no one could or did deny the inadequacy of Fraser Hall, Dean Auerbach warned,

If the new recommendation of central administration is permitted to stand, many of my colleagues will actively seek employment elsewhere. It will become almost impossible to attract a new Dean of the calibre you would wish. It will be very difficult to find a law librarian to take the place of Professor Greene who is retiring next year. Our law alumni and the organized bar will regard the University action as a breach of faith with them, with results for the law school that are not pleasant to contemplate.²³⁹

235. See Letter from Members of the Law School Faculty to the Regents of the University of Minnesota (Aug. 7, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

236. *Id.*

237. *Id.*

238. See Remarks of Carl A. Auerbach, Acting Dean, Law School, to University of Minnesota Board of Regents (Aug. 9, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

239. *Id.* at 4.

The Regents' response was something of a compromise. Leaving the proposal in an ambiguous position, they voted to direct President Malcolm Moos to appear before the Legislative Building Commission to request the immediate release of \$400,000 in planning funds.²⁴⁰ It was apparently understood that if the Commission granted the planning funds, the University would then add \$13 million in construction funds to its 1973 capital request.²⁴¹ (Law alumni had agreed to raise privately the other \$1 million needed to complete the building.²⁴²) The *Minneapolis Star* regarded the compromise as "an attempt to assuage the law community, much of which occupies legislative seats, while not necessarily committing the University to asking for a new building immediately."²⁴³ Although Dean Auerbach viewed the action as giving the appearance that the University was backing away from the construction request,²⁴⁴ University Vice President Stanley Wenberg characterized it as "an effort to precipitate a decision [by the Commission] on the building What we're looking for is some possible means to trigger an action."²⁴⁵

As an effort to trigger action by the Commission, the move was unsuccessful. President Moos did make the appeal, but there was still no decision forthcoming. On the other hand, the controversy at least served to bring the law school's case before the public eye. The budget-slashing Regent's meeting received wide coverage in the news media, and a *Minneapolis Tribune* editorial, although it endorsed no particular proposal, noted that the need for a new law building of some sort was essentially undisputed.²⁴⁶ But the editorial also asserted, "There are some members of the university community who believe that legislators will appropriate big money only for medicine. They point to the rapid expansion of the Health-Sciences facilities on the campus and the ease with which a \$26.3 million request for more medical construction was approved last week by the Regents."²⁴⁷

With the issue before the public, Dean Auerbach and the law

240. Draft of Minutes, University of Minnesota Board of Regents, Physical Plant and Investments Committee (Aug. 9, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

241. See Administration Trims Building Request, University Report (Aug. 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

242. See text accompanying note 444 *infra*.

243. 'U' Wants \$63 Million for Building, *Minneapolis Star*, Aug. 10, 1972, § A, at 21, col. 1.

244. See Administration Trims Building Request, *supra* note 241.

245. *Id.*

246. See Joseph, *Unsettled Questions of Law School*, *Minneapolis Tribune*, Aug. 18, 1972, § A, at 4, col. 1.

247. *Id.*

school again solicited help from the friends of the school, hoping to strengthen their case before the Commission. Again school supporters were asked to contact individual Commission members. But in a response to one of these intercessions, law school proponents caught a glimpse of just how steep was the incline they were climbing. In a letter to lawyer John C. McNulty, Senator and Commission member William C. Kirchner explained the Commission's position. Originally, he noted, the University had requested more than \$125 million in building funds; now, after the August budget slashes, the University had a "bare-bones" request of \$67 million. Yet, the state's entire building budget for the year, he wrote, "cannot be over 50 or 60 million." Thus, the University could expect only one-third of its requested \$67 million. Finally, Kirchner wrote that "the medical center is already partly under construction and . . . there are considerable federal monies available to assist at this time on that effort. We accordingly are almost forced to give top priority to the Medical School request."²⁴⁸

Seemingly, the law school building issue was becoming more difficult by the minute. Autumn was to offer no relief. A complicating factor was the newly established Metropolitan College of Law, which opened its doors that fall.²⁴⁹ A resolution with respect to the new school passed by the Hennepin County Bar Association governing council²⁵⁰ probably expressed the reaction of many University law school proponents as well. Since the unaccredited new school had an inadequate library, insufficient full-time faculty, and a proprietary orientation, the council "strongly objected" to its enrolling students that fall. Noting that the University and William Mitchell College of

248. Letter from State Senator William C. Kirchner to John C. McNulty (Sept. 18, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

249. Metropolitan College of Law closed within a year. However, later in the same year, another new law school, the Midwestern College of Law, began operations with many of the students and some of the faculty from the defunct Metropolitan College of Law. In 1974, Midwestern moved to the campus of Hamline University in St. Paul. Two years later, in 1976, Hamline University and Midwestern formally affiliated, and Midwestern became the Hamline University School of Law.

Interestingly, Hamline University had previously had a law school as part of its program. While located in Red Wing, Minnesota, Hamline had started a small law program in 1857, only to have the Civil War interrupt its operations in 1861. The law program failed to revive after the Civil War. Telephone Interview with Leonard Bier-net, Assistant Dean, Hamline University School of Law (Apr. 10, 1979), St. Paul, Minnesota. See also 1978-80 CATALOG, HAMLINE UNIVERSITY SCHOOL OF LAW, at 7 (June 1978).

250. See Letter from Patrick W. Fitzgerald to Dean Carl A. Auerbach (Nov. 6, 1972) and attached resolution (Sept. 29, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

Law were unable to meet the current demand for legal education, the council urged the Regents and the legislature to act favorably on the University's expansion proposal.

A second factor muddying the waters in the fall of 1972 was the confusion over the law school's priority status. After the August compromise and subsequent Commission inaction, it was not clear whether the law school was still a top priority. Dean Auerbach thought that it was and requested President Moos to clarify the University's internal documents to reflect that position.²⁵¹ President Moos apparently was unable to clarify the situation without final resolution by the Board of Regents. On November 12, 1972, the Regents reestablished the law school as the first priority construction item, exclusive of the health sciences request, on the Twin Cities campus.²⁵² But, a further compromise from the law school was exacted: the amount requested was again reduced—this time to \$11.5 million (still with the condition that the alumni would raise an additional one million dollars).²⁵³

The final and most significant complication in the law school's 1973 new building drive was the fall election. Despite President Nixon's landslide reelection, control of both houses of the Minnesota Legislature slipped from Republican hands for the first time since 1859.²⁵⁴ The Democratic Farmer-Labor Party (DFL), which had been gradually gaining strength in Minnesota politics, swept to a surprise victory, winning majorities in both houses. Suddenly, every group seeking consideration from the 1973 legislature, including the law school, had a new set of decision makers to approach and persuade. Four years of work were quickly erased and a new effort had to begin.

In light of the election results, the recommendations of the now-lame duck Building Commission were likely to carry very little weight with the legislature. Its status was further diminished when the new DFL leadership revealed its intention to abolish the Commission as unnecessary. To better integrate building decisions with program appropriations, building requests would henceforth be heard initially by the legislature's money committees.²⁵⁵ Nevertheless, the Commission still had the legal authority to release the law school's planning

251. See Letter from Dean Carl A. Auerbach to President Malcolm Moos (Sept. 21, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

252. Minutes of the University of Minnesota Board of Regents (Nov. 12, 1972) (on file at the University of Minnesota Archives, Minneapolis, Minnesota).

253. *Id.*

254. THE MINNESOTA LEGISLATIVE MANUAL 1973-1974, at 34 (1973).

255. Those committees were the House Appropriations Committee and the Senate Finance Committee.

funds under the 1971 "sum sufficient" appropriation. If they were released promptly, planning could be well advanced when the 1973 legislature considered the full construction request. Without this planning, proponents feared that construction funds might be lost for still another biennium.

Realizing the Commission's lame duck position, Chairman Delbert Anderson told Dean Auerbach shortly after the elections that the Commissioners would like to do "what the liberals [the DFL members] want."²⁵⁶ By relaying this message to Governor Wendell Anderson, Auerbach hoped Anderson would send out the message that the liberals wanted a new law school building.²⁵⁷ But Governor Anderson and the liberals were not so sure. After all, they had to operate under the same fiscal constraints as their Republican predecessors, and there simply was not a large amount of building money available in 1973. So, with the DFL silent on the issue, the Commission carried slowly on to the completion of its report in late December 1972.

In the meantime, two other events indicated some of the ill effects of the law school's protracted and unsuccessful battle. The first was a letter reflecting the disillusionment of some of the bar and alumni. While many alumni were standing firm with the school and making even greater commitments to it, others began to weary of the continued setbacks. In declining to make a pledge to the 1973 Partners in Excellence program, one alumnus explained that he did so

so that I can enter a small voice of protest over the handling of the proposal of the new law school. I am dismayed when, year after year, I see and read of millions of dollars being poured into the health sciences and little or no money being used to assist the social sciences. I do not believe that we should slight the health sciences, as the community and individual health is of supreme importance. However, I cannot help but feel that the University and the legislature have provided a mammoth machine for research in health while completely neglecting very necessary and demanding research in how we conduct our day to day business and personal affairs.

. . . .
While we stand ready to support the law school to the extent of our abilities, we believe these views should be communicated to you. The law school fund has carried the logo "Partners in Excellence." Some of us are beginning to feel that there is no partnership involved at all, but rather, a unilateral effort with no corresponding effort on the other side.²⁵⁸

256. Letter from Dean Carl A. Auerbach to Governor Wendell Anderson (Nov. 9, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

257. See *id.*

258. Letter from Ford M. Robbins to Carl A. Auerbach (Dec. 15, 1972) (on file

A second indication of the depth of the law school's problem came in the form of a memorandum submitted to President Moos by members of a visiting accreditation team. Three representatives of the Association of American Law Schools and the American Bar Association came to Minnesota to inspect the law school late in the fall quarter of 1972. Shortly thereafter, and before their formal report was submitted and processed by the AALS and the ABA, they took the unusual step of sending a memorandum containing their personal views to President Moos. Motivated perhaps in part by the knowledge that their forthcoming formal report could not be quoted in any of the school's public statements, their memorandum offered the University a disinterested appraisal of the law school and its needs in a publicly usable form.

In the main, the memorandum emphasized the same points that the law school had been making all along: that the overcrowded classroom and study spaces were making a "commuter school out of the law school"; that faculty recruitment and retention were being critically hampered; and that the dislocation of important extracurricular activities such as the *Law Review* and the legal aid clinic reduced the school's educational effectiveness. More importantly, the memorandum made a point that the law school could not make so convincingly by itself: that what was endangered by the inadequacies of the school's physical plant was an institution of real quality.

The University of Minnesota Law School is one of the truly fine law schools in the United States. Its faculty is outstanding; its student body excellent; and its library collection one of the best in the country. It borders on tragic that the school is unable to function at full potential due to the adverse physical conditions under which the faculty and students must work. [Among the schools] with which Minnesota might wish to compare itself—the Big Ten schools plus Chicago, Berkley, UCLA, and Stanford; Harvard, Yale, Columbia, Virginia, Duke, and Texas, there is no doubt in our minds that in terms of physical facilities, Minnesota must rank a distant last . . . Unless action is taken quickly, we fear that the University of Minnesota Law School is in danger of becoming "just another law school."²⁵⁹

Here, in the writing of informed but disinterested observers, was verification of the two major tenets in the law school's legislative campaign—that the current inadequate facilities were strangling the

with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

259. Memorandum from David H. Vernon, Albert E. Jenner and Theodore J. St. Antoine to President Malcolm Moos (Dec. 5, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

school, and that the planning for the future should reflect the quality of the school's past and present.

In addition, the handling of the ABA-AALS memorandum was symptomatic of the growing problems between the law school and the University central administration. The memorandum, addressed only to President Moos, did not come to the attention of the law school Dean and faculty until nearly four months after it had been written.²⁶⁰ Despite its obvious value in the law school's legislative effort, the memorandum sat unused from December 1972 until April 1973. At the very least, this indicates that the law school and the central administration were not in close communication nor operating a coordinated lobbying effort. And it was only one of several such indications that surfaced in the 1973 legislative effort.

e. The Nadir—The 1973 Legislative Session

Since the 1971 legislature had passed a "sum sufficient" appropriation in June 1971, the law school's new building proposal had seen little success. Commission inactivity and waffling had marked the intervening year and a half with frustration. That frustration was to continue throughout the 1973 session. In late December 1972, the lame duck Legislative Building Commission forwarded to the Governor its recommendations concerning the state's building program for the coming biennium. From \$180 million in requests submitted to it, the Commission recommended appropriations for \$63 million worth of projects. The University's share was about \$32 million—with \$400,000 targeted to fund working drawings for the law school building.²⁶¹ Although the recommendation did not effect a release of the funds for immediate use in preparing the drawings, it did indicate a Commission preference for the new building proposal over the remodeling alternatives discussed in the 1971 session.

Whatever slight weight the Commission's recommendations may have had was lessened when Governor Anderson noted that these recommendations had been prepared before new statewide enrollment projections had been released. In light of the new data, the Governor asked legislators to consider "only those items during the present session which they determine are not affected by the current trend of enrollment decline and are absolutely necessary to maintain

260. See Memorandum from Dean Carl A. Auerbach to the Faculty (Apr. 25, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

261. See Legislative Building Commission Report (Dec. 26, 1972) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

the high quality of higher education we enjoy in Minnesota.”²⁶² In his budgetary message, Anderson proposed no new construction funds for the University except for the health sciences project. Senator Hubert H. Humphrey, who had interceded with Anderson at Dean Auerbach’s request, noted that although the Governor was “sympathetic” to the law school proposal, his budgetary problems were simply too severe. And, Humphrey added, “I am not at all sure that the Democratic majority will want to break open the Governor’s budget.”²⁶³

While the Governor’s budget proposal may have doomed the hopes for construction funds in 1973, there was still hope for the planning funds. In this, the school had the Governor’s support.²⁶⁴ The problem was in winning the support of the legislature and, in particular, the new leadership. With the abolition of the Legislative Building Commission early in the 1973 session, the focus turned to the Senate Finance Committee and the House Appropriations Committee. At the head of the Senate Finance Committee was Senator Norbert Arnold. Senator Jack Davies was Chairman of the Finance Committee’s Education Subcommittee. Neither of these men favored the new building proposal. In the House, the key figures were Representatives Fred Norton, Chairman of the Appropriations Committee, and Howard Smith and Ray Faricy, Chairman and Vice Chairman of the Committee’s Education Division. Among these legislators, too, there was a good deal of skepticism about the law school’s proposal.

Early meetings with legislative leaders had demonstrated that an uphill battle was ahead,²⁶⁵ but the situation was dramatized by an unannounced inspection of the law school by House legislative leaders. Wanting to see the situation for themselves, they came to the law school but not to the dean’s office. Instead, they sought out their own guide, a student chosen at random, to show them through the school and to the alternative sites. From the style of their visit, Dean Auerbach concluded that “the present legislative leadership will insist upon making up its own mind and, to this end, require us to justify our building proposals all over again. We must undertake to do so but

262. Letter from Governor Wendell Anderson to Delbert Anderson (Jan. 11, 1973), *appended to the Legislative Building Commission Report, supra* note 261.

263. Letter from Senator Hubert H. Humphrey to Dean Carl A. Auerbach (Jan. 24, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

264. *See* Letter from Dean Carl A. Auerbach to Senator Hubert H. Humphrey (Jan. 18, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

265. *See* Memorandum from Dean Carl A. Auerbach to the file re: meetings with Senate Majority Leader Nicholas Coleman and Fred Norton, Chairman of the House Appropriations Committee (Jan. 20, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

find a way to expedite the process."²⁶⁶

In the new building's already lengthy legislative history, it was becoming apparent that each time the law school proposal was to be justified, new areas of concern were discovered. The 1973 session was no exception, as at least two new issues drew considerable attention. The first of these reflected the concern that perhaps the law school had become too much of a national and not enough of a local asset. Legislators, especially those in the House of Representatives, wanted to know how many of the school's students were from Minnesota and how many of them stayed in the state upon graduation. They were not anxious for Minnesota to provide a significant amount of legal education and legal talent for the rest of the nation.

The law school, however, could cite some helpful statistics. Since the admissions crunch had begun, the law school had limited non-resident admissions to twenty percent of first-year enrollment.²⁶⁷ With another fifteen positions reserved for minority student applicants,²⁶⁸ about 185 of the total 250 positions remained for Minnesota residents. And, for its graduates, the law school could point to the highest Minnesota retention rate of any graduate unit in the University. Seventy-three percent of the law school's graduates settled in Minnesota, compared with fifty percent of those graduating from the medical school and sixty-four percent of those receiving degrees in agriculture.²⁶⁹ These facts apparently quelled much of the concern about the law school's commitment to serving the state, and the House Committee approved \$300,000 in planning funds for the law school.

The second major issue of the 1973 session, surfacing principally in the Senate debates, concerned Walter Library. Earlier studies had shown that East Bank solutions, involving an addition in the Tempo-

266. Letter from Dean Carl A. Auerbach to President Malcolm Moos (Feb. 14, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

267. The faculty had strongly defended the 20% limitation against erosion designed to improve the law school's public relations position within the state. Because of the large number of admittees who were University of Minnesota graduates, the faculty feared it already had "one of the least diverse student bodies of any of the better law schools." Minutes of the University of Minnesota Law School Faculty (May 21, 1971). The nonresident admittees were therefore important for diversification, as well as for insuring that students with the highest potential could be considered regardless of their state of residence. See Memorandum from the Admissions Committee to Dean Carl A. Auerbach (Apr. 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

268. See text accompanying note 488 *infra*.

269. See Letter from Dean Carl A. Auerbach to Representative Ray W. Faricy (Mar. 27, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

rary North of Mines area or a link with Appleby Hall, were not feasible.²⁷⁰ But what about using Walter Library? Recently removed from main library status, Walter was then being used to house a number of smaller libraries for collegiate units located in nearby facilities. Legislators wanted to know if the University had considered remodeling the building to accommodate the law school. The answer was yes, Walter had been considered and rejected. University Vice President James Brinkerhoff, responding to inquiries from Senator Jack Davies, Chairman of the Education Subcommittee of the Senate Finance Committee, detailed the University's position, concluding,

Walter Library is being utilized about as intensively as any building can be and any plan to re-utilize the building for new functions would have to include provisions for the relocation of the units presently occupying Walter Library and, given the existing space situation on the Minneapolis Campus, the provisions of these relocation facilities could not be accomplished without an amount of new construction approximately the size of Walter Library.²⁷¹

Perhaps in an effort to demonstrate that the University had indeed examined the proposal seriously, Vice President Brinkerhoff included with his letter a copy of Milton Trapold's memorandum rejecting the Walter Library proposal advanced by Pat Meagher a year earlier.²⁷² Brinkerhoff also enclosed a later Meagher study setting forth a plan for accommodating the law school within existing buildings, principally Walter Library.

Significantly, although it was then more than ten months old, no one in the law school had seen Meagher's second study until a copy of Brinkerhoff's letter arrived at the dean's office on April 14, 1973.²⁷³ Apparently, with few officials in central administration still actively considering the Walter alternative, the report had not been considered sufficiently important to pass along to the law school. In the legislature, however, the report found a believer and an advocate in Senator Davies.²⁷⁴ Unsatisfied with Vice President Brinkerhoff's dismissal of the proposal, or for that matter, with the Regents' assurance that "[d]uring the past four years all possible alternatives to a new law building have been explored,"²⁷⁵ Davies believed that the Univer-

270. See text accompanying note 196 *supra*.

271. Letter from Vice President James Brinkerhoff to Senator Jack Davies (Apr. 13, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

272. See note 204 *supra* and accompanying text.

273. See Letter from Dean Carl A. Auerbach to President Malcolm Moos (May 29, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

274. *Id.*

275. See Letter from Board of Regents to Legislators (Apr. 18, 1973) (on file with

sity had not considered the Walter Library alternative as anything more than an obstacle in the path of the new building proposal. He and other senators on the Education Subcommittee made their own visit to the law school and Walter Library,²⁷⁶ and emerged convinced that the Meagher proposal at least warranted closer study by University officials. Further, doubts about the wisdom of the West Bank proposal were accentuated when one law student told legislators that inefficient scheduling of law classes was a significant contributor to the law school's congestion problems.²⁷⁷ In the face of these doubts, Senator Davies and other legislators remained opposed to authorizing planning funds for a new West Bank law school building.

As the skies darkened over the proposal's chances in the Senate, Dean Auerbach, hoping to garner public support, visited the editorial offices of three Twin Cities newspapers. Armed with the recently discovered AALS-ABA inspection team memo, he provided the editors with background about the school and its proposal and successfully solicited their support. Three sympathetic editorials followed, all stressing the law school's strong reputation and its demonstrated building needs.²⁷⁸ But despite a last-ditch effort by Auerbach to dispose of the Walter Library issue,²⁷⁹ Davies remained unconvinced.

On May 5, 1973, Davies' Education Subcommittee rejected the Building Commission's recommendation of planning funds for a new law building. This action was subsequently adopted by the full Senate Finance Committee when it voted a \$49 million construction bill to the Senate floor without a law school appropriation.²⁸⁰ Since the

the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

276. See Letter from Dean Carl A. Auerbach to President Malcolm Moos (Apr. 16, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

277. This opinion was voiced once at a House Law School Task Force Hearing on the School and later, apparently, informally. See Letter from Dean Carl A. Auerbach to Representative Ray Faricy (July 19, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

278. See *The Need for a New UM Law School*, Minneapolis Tribune, Apr. 23, 1973, § A, at 10, col. 1; *Case for New Law Building*, Minneapolis Star, Apr. 20, 1973, § A, at 12, col. 1; *New Law School Building*, St. Paul Pioneer Press, Apr. 18, 1973, § A, at 11, col. 1.

279. See Letter from Dean Carl A. Auerbach to Senator Jack Davies (May 2, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

280. This action was not without critical editorial commentary. The St. Paul Pioneer Press wrote: "[T]he University of Minnesota Law School was dealt with harshly by the Senate Finance Committee Putting the blocks to construction now seems short-sighted and will prove costly in the end." *Editorial*, St. Paul Pioneer Press, May 10, 1973, § A, at 12, col. 1.

Senate building bill had given the law school nothing while the House version authorized \$300,000 in planning funds, the law school's 1973 session hopes were pinned on the conference committee. But, as Senators Davies and Arnold were two of the ten conferees, and Delbert Anderson was the only conferee who strongly favored the law school's proposal, the planning funds were doomed to deletion.

Legislative leaders did not, however, intend that the law school be completely ignored. Instead, confident that the law school could expand its operations in Fraser and adjoining buildings if given the proper inducement, Senate leaders proposed the following supplemental budgetary appropriation, which was adopted and included in the University's omnibus budget bill:

Law School Supplement

1974 . . . \$170,000. 1975 . . . \$350,000

The above appropriation is for additional law students over planned first year enrollments for the 1973-74 school year, and additional law students over planned first year enrollments for the 1974-75 school year.²⁸¹

While the legislation did not specify exactly how many new students were to be admitted or for what purpose the funds were to be used, University Vice President and lobbyist Stanley Wenberg read it to intend that an additional fifty students be added each year. The appropriation was regarded as "soft," meaning that its continuation in future biennia was contingent, in Wenberg's estimation, "on the law school's use of present facilities, its willingness to change class schedules to increase their efficiency and future developments in the supply-demand picture for law graduates."²⁸²

Of course, a necessary step toward increasing the size of the student body was to increase the size of the faculty. Yet, in the same session, the legislature turned down the University's request for "hard" money to fund four new faculty positions in the law school—positions requested in part to ease the suddenness of the eventual faculty increase implied in the school's expansion plans.²⁸³ The law school faculty, believing that it could not attract the quality of faculty it desired without hard money support for the positions, was unwilling to attempt to hire new members with the soft money.

281. Act of May 24, 1973, ch. 768, § 11(g), 1973 Minn. Laws 2408.

282. Memorandum from Dean Carl A. Auerbach to Faculty (June 13, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) (quoting Memorandum by Vice President Stanley Wenberg (May 25, 1973)).

283. See A Program and Annual Budget for Minnesota Law School Fund, appended to Minutes of the University of Minnesota Law School Faculty (Oct. 16, 1973).

Moreover, it had been the law school's consistent position that the present facilities were inadequate for present student enrollment, to say nothing of expansion. More money, without resolution of the underlying issue of inadequate facilities, would not remove the problems that precluded admission of more students. Thus, viewing the special appropriation as akin to a bribe to the law school to do what it had repeatedly said was impossible, the law faculty and the University central administration agreed to refuse it.²⁸⁴

f. The Breakthrough—Planning Funds from the 1974 Legislature

Law school proponents were understandably disappointed by the results of the 1973 legislative effort. Although there had been some signs of support, notably in the House, the general mood of the legislature had been adverse.

On the bright side, however, the legislature was then moving to a flexible annual session meeting schedule, which would allow the law school to remake its appeal in 1974 rather than having to wait until the new biennium began in 1975. A constitutional amendment, approved by the voters in 1972, allowed legislative leaders to divide the constitutionally prescribed 120 days of the biennial legislature between two annual sessions.²⁸⁵ Consequently, some of the days allotted to the 68th legislature (1973-1974) were saved for the 1974 session. This schedule, however, did not ensure that law school proponents would again be afforded an opportunity like the one in the session just past. In making the transition to annual sessions, legislative leaders attempted to avoid the tendency to argue over the same issues twice. Thus, they designated the first session of the biennium as the one in which the major appropriation and revenue bills would be handled, reserving the second session for substantive, non-spending legislative work. The 1974 session was intended to be of the latter type. Consequently, one of the law school's first hurdles in the 1974 session was getting legislative approval to even present the proposal again. Fortunately, the law school was still seeking only planning funds—not a full construction appropriation—and, consequently, it was not a major spending proposal. Thus, legislative leaders told Dean Auerbach that there would be “no bar against appropriations . . . if the law school could persuade the legislature of the need.”²⁸⁶

284. See Memorandum from Dean Carl A. Auerbach to Law Faculty (July 6, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

285. See THE MINNESOTA LEGISLATIVE MANUAL 1973-1974, at 36-37 (1973).

286. Letter from Dean Carl A. Auerbach to Governor Wendell Anderson (Dec. 5, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) (reporting a conversation with Senator Nicholas

An initial step in preparing the law school's case for the 1974 session was to analyze what had happened in 1973, to identify the real stumbling blocks, and to decide how they could be eliminated. Through discussion with principal figures, law school proponents attempted to obtain a complete understanding of the nature of the task they faced. What emerged was somewhat surprising. First, they learned that the law school appeared not to have been receiving strong support from at least some University lobbyists.²⁸⁷ Perhaps less than total dedication by some University officials to the law school's request was a natural consequence of the acrimonious debate concerning the Vice Presidents' budget-cutting proposal of the summer before. Perhaps, too, the fact that Dean Auerbach²⁸⁸ and other law school supporters were devoting a good share of their own time in direct lobbying efforts made central administration lobbyists believe that the lobbying job was already being done. At any rate, several legislators told the law school proponents that the message concerning the law school's priority status within the University was simply not getting through.²⁸⁹

In addition, there remained a legislative concern over whether an East Bank law school solution had been adequately investigated. Here the law school was in something of a dilemma. Lacking the resources necessary to conduct feasibility and cost studies itself, the law school had to rely on the University central administration to do the studies for it. On the basis of these studies, the central administration told the law school that East Bank expansion would be too costly, would cause too much dislocation, and would not justify fur-

Coleman). See also Letter from Dean Carl A. Auerbach to G. Lockhart (July 24, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) (reporting a conversation with House Appropriations Committee, Education Division Chairman Ray Faricy, who had concluded with the remark, "if I could persuade Jack Davies to go along we could have our money in January").

287. See Memorandum from Professor Robert Stein re: Conversation with Pat and Jack Davies (July 30, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). See also Letter from Dean Carl A. Auerbach to Regent E. Andersen (Aug. 30, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) ("I think it may suffice, on one condition, to make a formal request with the law school as top priority. The condition is [that] the University's lobbyists . . . translate this decision of the Regents into affirmative and enthusiastic action before the legislative committees.").

288. Dean Auerbach had a political power base of his own. Moreover, his wife, Laura, was a staff aide and speech writer in the office of Governor Wendell Anderson.

289. See Memorandum from Dean Carl A. Auerbach to President Malcolm Moos (Aug. 20, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Memorandum from Robert Stein re: Conversation with Pat and Jack Davies, *supra* note 287.

ther planning. Some legislative leaders, however, did not believe those studies and were opposing the law school's new building proposal on that basis.²⁹⁰ The issue was related to a general legislative disappointment in the University's lack of an overall land use plan for the Twin Cities campus.²⁹¹ Under these circumstances, all the law school could do was to appeal to the central administration to defend more staunchly and convincingly the dismissal of the East Bank alternatives.²⁹²

Finally, some legislators were still concerned over whether the demand for legal education would continue to support an expanded enrollment of the school. The soft money expansion appropriation of 1973 had, in part, reflected a legislative acknowledgement that the law school should take some action to meet the current high demand for legal education. At the same time, however, it reflected a legislative unwillingness to make a permanent provision for that expansion. Senator Jack Davies did not believe that the high demand for legal education would continue. As Professor of Law and Registrar at William Mitchell College of Law, Davies was well aware of the current high level of demand. William Mitchell was, in fact, planning to expand its own enrollment to accommodate the greater number of applicants. Its Dean, Douglas R. Heidenreich, publicly supported the University's plan to expand to 1,000 students.²⁹³ Nonetheless, Senator Davies remained concerned that the bottom would fall out of the law

290. See Memorandum from Dean Carl A. Auerbach to Regents Cina and Sherburne and Vice President Stanley Wenberg (Dec. 20, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

291. See Memorandum from Dean Carl A. Auerbach to the file re: Law School Building in the 1974 Legislative Session (Mar. 28, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

292. See Memorandum from Dean Carl A. Auerbach to Regents Cina and Sherburne and Vice President Stanley Wenberg, *supra* note 290; Memorandum from Dean Carl A. Auerbach to Harold Chase (Feb. 26, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

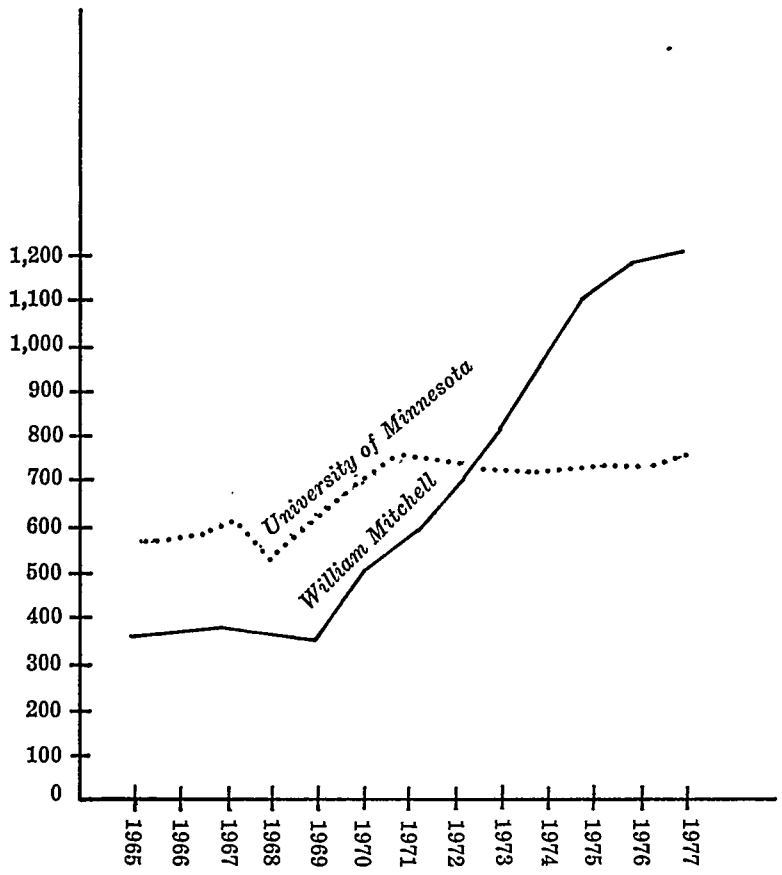
293. See Memorandum from Dean Carl A. Auerbach to President Malcolm Moos (July 18, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). Figure 1 (see next page) compares the enrollment at William Mitchell College of Law and at the University of Minnesota Law School during the period 1965-1977 (enrollment data from the Office of Admissions and Placement, University of Minnesota Law School, Minneapolis, Minnesota).

school enrollment, presumably to the detriment of both schools.²⁹⁴

After assessing their position, law school advocates began to mobilize for the 1974 session. Work began in the summer of 1973. Legislators who had indicated during the 1973 session their need to

FIGURE ONE

Comparison of Enrollment,
1965-1977:
William Mitchell College of Law and
the University of Minnesota Law School



294. See Letter from Assistant Dean Patricia Ann Lydon to Dean Carl A. Auerbach (Oct. 24, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

study the proposal further were invited to do so by visiting the law school at their earliest convenience.²⁹⁵ Officials of the University of Minnesota Law School and William Mitchell College of Law agreed to collaborate on a joint forecast of the demand for legal education,²⁹⁶ in the hope that the University could make its enrollment predictions more credible to the still-skeptical legislature. And, of course, efforts to consolidate support among leading political and judicial officials continued.²⁹⁷

Additional ammunition was added to the campaign in a report prepared in the summer of 1973 for the Law Enforcement Assistance Administration. Focusing on the clinical aspects of the law school's program, the report declared,

The University of Minnesota Law School may well have one of the outstanding and progressive clinical law programs in the country.

The most glaring deficiency for one of the nation's top rated law schools was the deplorable and grossly inadequate physical plant. The law school has long since outgrown its archaic facility and the clinical programs . . . are not singled out for inadequate office space.²⁹⁸

295. See Letter from Robert Stein to Senators John Chenoweth and Mel Hanson (July 20, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

296. See Letter from Assistant Dean Patricia Ann Lydon to Dean Douglas Heidenreich (Jan. 15, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Assistant Dean Patricia Ann Lydon to Dean Douglas Heidenreich (July 24, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

297. See Letter from Dean Carl A. Auerbach to Justice Walter F. Rogosheske (Aug. 15, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean Carl A. Auerbach to Senator Hubert H. Humphrey (Aug. 31, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). Both letters are interesting and instructive, indicating, perhaps, the degree of frustration that Dean Auerbach felt.

In the Humphrey letter, Dean Auerbach chided his long-time friend to speak out against what he perceived to be the state's health science overemphasis:

I know how close you have been to the development of the University's health science complex. I appreciate that the dependence of the complex on federal funds gives you an opportunity for action missing in the case of the Law School, for which no federal funds are possible. But I am becoming disturbed at the disproportionate amount of the total state appropriation for the University that is going to the health sciences. Already, some wags are suggesting that the University be renamed the "Health University of Minnesota." This is not a healthy situation for the University or, in the long run, for the future of the health sciences in the University . . . As a devoted friend of the health sciences, you would not be misconstrued if you spoke up in favor of a better balance of emphasis within the University.

298. Report Prepared by the Consultants to the National Legal Aid and Defender Association and the Criminal Court Technical Assistance Project under Contract with

However, by mid-1973, no one was debating the inadequacy of the current facility. What was needed was agreement about the location, size, and quality of its replacement.

One of the law school's major goals during the last half of 1973 was to secure more active support from within the University itself. Aware that in the legislative session just concluded this support could have been stronger, the law school proponents attempted to strengthen their position with the central administration. But the approach adopted, which was typical of much of the law school's campaign, may indicate one source of the law school's problems. With more friends on the Board of Regents than in central administration, the law school seemed to approach the latter group through the former. By consolidating the law school's position with the Regents, Dean Auerbach apparently hoped to force better representation out of the central administration.²⁹⁹ Not surprisingly, however, central administrators resented this approach. Relations between the law school and central administration lobbyists were not much improved in 1974.³⁰⁰

The law school did have strong support from the Board of Regents. One of the Regents had gone so far as to suggest that the Board inform the legislature that it would refuse all building grants until the law school proposal was funded.³⁰¹ More officially, the Regents, perhaps responding to the law school's lobbying problem with the central administration, established a special one-Regent committee charged with giving special attention to the law school's 1974 legislative fortunes.³⁰² Although that idea was dropped when, for other reasons, the designated Regent resigned from the Board,³⁰³ the Regents also ap-

the Law Enforcement Assistance Administration (July 13, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

299. See, e.g., Memorandum from Dean Carl A. Auerbach to Regents Cina and Sherburne and Vice President Stanley Wenberg, *supra* note 290 (explaining how the law school is caught in the middle on the Walter Library issue, between the central administration and the unconvinced Senator Davies); Letter from Dean Carl A. Auerbach to Regent E. Andersen, *supra* note 287; text accompanying note 290 *supra*. See also Memorandum from Dean Carl A. Auerbach to President Malcolm Moos with a copy to Regent E. Andersen (Aug. 20, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) (explaining need to articulate law school's priority status).

300. See Memorandum from Dean Carl A. Auerbach to the file re: Law School Building in the 1974 Legislative Session (Mar. 28, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

301. Letter from Dean Carl A. Auerbach to Regent E. Andersen, *supra* note 287.

302. Letter from Regent E. Andersen to Dean Carl A. Auerbach (Sept. 4, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

303. See Letter from F. Hughes to Dean Carl A. Auerbach (Nov. 20, 1973) (on

proved the 1974 request for law school building planning funds³⁰⁴ despite legislative plans for a "short session with few if any appropriations,"³⁰⁵ and affirmed the new law school as their number one priority.³⁰⁶

With this work done, law school proponents turned their attention to preparing their own lobbying program. As before, one focus of the effort was to motivate the constituency most likely to take an interest in the issue—the practicing bar. To that end, a detailed article describing the proposal and its history was prepared by the author, as Chairman of the Law School Building Committee, and published in *THE HENNEPIN LAWYER*.³⁰⁷ Its opening paragraphs set the stage for the coming session:

By now, it is likely that every lawyer in Minnesota is aware of the proposal for a new University of Minnesota Law School building. With persistent regularity, if not with complete success, the proposal has been presented to the Minnesota Legislature in 1969 . . . and in 1971 . . . and in 1973.

Like Tennyson's "Brook" the proposal seemed destined to go on forever. However, it is now becoming apparent that 1974 is shaping up as a critical year of decision for the new building proposal and, therefore, for the future of the University of Minnesota Law School.³⁰⁸

The article went on to describe the history and current status of the proposal. Lobbying help from the bar was requested so that the proposal might have a successful future.

Another component of the law school's lobbying effort was the attempt, made time and again, to satisfy legislative inquiries about East Bank alternatives, particularly Walter Library. Though the issue was still a major concern in the legislature, the law school apparently still could not obtain from the central administration what it felt was an adequate analysis of the Walter Library alternative. Consequently, the law school produced, on its own, four voluminous

file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

304. See Memorandum from Dean Carl A. Auerbach to Assistant Vice President Stanley Kegler (Nov. 7, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

305. Memorandum from Assistant Vice President Stanley Kegler and Vice President Stanley Wenberg to Provosts, Deans and Directors (Oct. 1, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

306. See Minutes of the University of Minnesota Board of Regents (Feb. 8, 1974) (on file at the University of Minnesota Archives, Minneapolis, Minnesota).

307. See Stein, *New Law School Building . . . A Year of Decision*, *THE HENNEPIN LAWYER*, Nov.-Dec. 1973, at 4.

308. *Id.*

reports on the subject within a period of only two months.³⁰⁹ Citing the fact that the necessary remodeling of Walter alone, without the expense of providing space for the units displaced, would cost about \$5 million, the law school hoped to lay the idea to rest. Yet, even after all of this was done, Dean Auerbach was still prodding the University for just one more central administration memorandum on the topic. This, he felt, would be "the clincher."³¹⁰

During the first two months of the 1974 legislative session, there was little action on the proposal. The documents identified above were distributed to the appropriate committees. A joint memorandum from Deans Auerbach and Heidenreich was also distributed, predicting that under even the most conservative assumptions, the pool of qualified applicants in the years ahead "would still exceed the number of first year places that would be available at our law schools, even if the University of Minnesota Law School expands (to 360 first year students) and if William Mitchell is able to continue to take 300 first year students per year, an assumption that as of this writing is subject to considerable doubt."³¹¹ Additionally, private expressions of support continued. But still there was no direct legislative action; neither of the involved committees had even so much as a hearing on the issue.

Finally, a joint hearing of both the Senate Finance and House Appropriations Committees was scheduled for March 7, 1974. Realizing this would be their only opportunity, law school proponents carefully orchestrated their presentation. In addition to University and law school officials, leaders of the alumni, bar, and student body spoke on behalf of the school's proposal. Although largely reiterating the law school's position as it had been refined over five years of

309. See *The Walter Library Fraser Hall Alternative to a New Law Building on the West Bank of the Minneapolis Campus* (Feb. 15, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); *Accommodating the Law School Program in Walter/Fraser* (Feb. 1, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); *Report: The Possibility of Accommodating the Expanded University of Minnesota Program in Existing Minneapolis Campus Buildings* (Jan. 28, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); *Program Comments on the Walter/Fraser Proposal* (Dec. 17, 1973) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

310. Letter from Dean Carl A. Auerbach to Harold Chase (Feb. 26, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

311. See *Memorandum from Dean Carl A. Auerbach and Dean Douglas Heidenreich to Members, Senate Finance and House Appropriations Committees* (Feb. 19, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

similar hearings, Dean Auerbach added a new and distressing note by demonstrating that the predicted faculty recruitment problem had become a reality. "Invitations to join our faculty," he reported, "have been rejected by young men and women who have chosen to go to law schools with which we have never before considered ourselves to be in competition. The morale of our faculty is shaken."³¹² At the Committees' invitation, Minnesota Supreme Court Chief Justice Robert Sheran also spoke on behalf of the law school, endorsing the expansion in enrollment it contemplated.³¹³ Only one speaker, a first-year law student at the University, spoke against the proposal.³¹⁴

With the legislative wheels now turning, even though slowly, Dean Auerbach sought to smooth the path. The day after the hearing he again visited the editors of the three largest Twin Cities newspapers as he had during the previous session. He was again successful, and three more supportive editorials appeared in the next three days.³¹⁵ The law school building proposal, in fact, was about as widely supported by non-legislative interests as it could be. Endorsed by leaders of the bench and bar, by the Regents, by the University central administration, by the Dean of a competing law school, and by the press, the only remaining group to persuade was that most critical group, the Minnesota Legislature.

The final legislative drive began in the Senate. It was the Senate obstacle, the Education Subcommittee of the Senate Finance Committee, chaired by Senator Davies, that had proven to be so difficult in the past. House leaders, who had demonstrated their support the year before, told law school representatives that they would not take action until the Senate hurdle had been cleared.³¹⁶ As chairman of the Education Subcommittee, Davies had the power to defeat the proposal simply by denying it a hearing. Despite his opposition to the proposal, however, he allowed the matter to be considered at the subcommittee's March 14 meeting. There, on the motion of Senator

312. Statement by Dean Carl A. Auerbach (Mar. 7, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

313. Chief Justice Sheran wrote shortly thereafter, "I believe that every college graduate who is able to handle the course work at an accredited law school should be given an opportunity for a legal education." Letter from Chief Justice Robert Sheran to Dean Carl A. Auerbach (Mar. 12, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

314. See *New Law School Building Supporters Plead Case; Legislators Unconvinced*, Minn. Daily, Mar. 8, 1974, at 3, col. 1. Although this article gave considerable weight to the effect of the single student's negative comments and generally suggested that the meeting had not been a successful one for the law school's proposal, this view was not shared by others who were at the meeting.

315. See *New UM Law School is Overdue*, *supra* note 278; *A Resource Worth Supporting*, Minneapolis Star, Mar. 9, 1974, § A, at 6, col. 1.

316. See Memorandum from Dean Carl A. Auerbach to the file, *supra* note 291.

Robert Tennesen, the proposal's chief Senate sponsor, an appropriation of \$500,000 for working plans and drawings for a law school building to cost \$13.25 million (\$1 million of which was still expected from private sources) was approved.³¹⁷

With this, House leaders moved into action; on March 20, 1974, the Education Division of the House Appropriations Committee approved an appropriation of \$400,000 for working drawings for a \$10 million building, excluding site work and equipment. This language was similar to that passed by the House in 1973, but included an additional \$100,000 in planning funds and \$1 million in construction costs. The proposal passed the full House Appropriations Committee the next day.³¹⁸ In the Senate, however, things had bogged down again. Senator Novak, then Chairman of the Finance Committee through which the proposal had to pass before reaching the Senate floor, did not want to have another committee meeting for fear that many other spending bills might surface. Additionally, he opposed the law school measure because he was opposed to all bonding bills in this off-year session. However, with the help of Representative Delbert Anderson, a way was found around the bonding problem by tapping already bonded but unexpended funds. Consequently, Novak agreed to call a meeting of his committee for Friday, March 22, 1974, and the law school's proposal passed easily.³¹⁹

On the same day, the full House passed its version of the appropriation and sent it to the Senate.³²⁰ Anxious to get the bill passed before the end of the session, which was rapidly approaching, Senator Tennesen quickly moved the House bill onto the Senate floor, substituted the Senate's language for that of the House, and moved its passage. But things were moving a little too quickly. The proposal, which by this time had been combined with several other University appropriations, came under attack.³²¹ By a vote of 29 to 29, with 9 senators not voting, the measure failed to pass.³²²

This vote surprised the law school proponents. Having shepherded the bill through the Senate committees, they had assumed the full Senate would support it. Rather than celebrating their expected victory, they found themselves gearing up for a full weekend of lobbying on both sides of the aisle.³²³ Given the closeness of the vote, a few

317. See *id.*

318. See *id.*

319. See *id.*

320. See JOURNAL OF THE HOUSE, 68TH MINN. LEGIS., 1974 SESS. 6678 [hereinafter cited as 1974 JOURNAL OF THE HOUSE].

321. See Memorandum from Dean Carl A. Auerbach to the file, *supra* note 291.

322. See JOURNAL OF THE SENATE, 68TH MINN. LEGIS., 1974 SESS. 5771 [hereinafter cited as 1974 JOURNAL OF THE SENATE].

323. In their lobbying efforts with the legislators, as in trying to secure better

changes of mind would get the proposal back on the track. By Sunday night, the proponents were confident that they had the votes required for reconsideration and passage of the bill.

It was thus with some assurance that Dean Auerbach took a seat in the Senate gallery on Monday morning. Yet, unbeknownst to him, a rider—one he was to find quite unacceptable—was being written and incorporated into the bill at that very moment.³²⁴ Reflecting the very serious concern of some legislators and other public officials representing the University area, the rider required the University to prepare and present a detailed study of space utilization, present and planned, for the Twin Cities campus.³²⁵ Further, it made release of the funds appropriated by the bill, including those for the law school's working plans, contingent upon completion of that land use study. The bill with its rider quickly passed.³²⁶

Again the law school proponents were surprised and discouraged. As a practical matter, they were in no better position than they had been after the 1971 session. In essence, the bill as passed contained a demand that the University restudy the law school's East Bank alternatives as a part of its overall plan. Only if this study again rejected those alternatives, and did so in a way that satisfied the legislature, would the planning funds be released.³²⁷ Worst of all, as Dean Auerbach noted, the bill as then amended "embodied no legislative commitment to a new law school."³²⁸ In this result, the school had become the hostage of some strong anti-University sentiments.

The last remaining hope was the conference committee that was to meet the next day. The law school wanted at all costs to avoid being tied to the rider. Proponents of the rider were contacted by friends of the law school. It soon became apparent that the rider was not intended to kill the law school proposal, but rather to force the

representation from central administration officials, see text accompanying note 299 *supra*, the law school's proponents aimed high. Perhaps because Dean Auerbach in particular exercised influence with the highest echelons of Minnesota politicians, his lobbying style appeared heavy-handed to some. In the final days of the 1974 session, one Senator attacked what he perceived as "unethical lobbying" on behalf of the law school, citing the intervention of a former Governor and a U.S. Congressman as examples. See Letter from Dean Carl A. Auerbach to Congressman Donald Fraser (Mar. 28, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota). The problem of perceived heavy-handedness was to continue into the next session.

324. See Memorandum from Dean Carl A. Auerbach to the file, *supra* note 291.

325. See 1974 JOURNAL OF THE SENATE, *supra* note 322, at 5841.

326. *Id.*

327. See *New Law School at U Faces Study*, St. Paul Pioneer Press, Mar. 26, 1974, at 8, col. 3; Memorandum from Carl A. Auerbach to the file, *supra* note 291.

328. See Memorandum from Dean Carl A. Auerbach to the file, *supra* note 291.

University to engage in serious land use planning.³²⁹ Consequently, the rider's proponents agreed, at the last minute, to release the law school planning funds from the contingency of completion of the study, requiring instead that the study be submitted before any new funds could be released in the next session.³³⁰

At last, the way was clear to agreement. On the final day of the session, the bill, as amended by the conference committee, passed both houses of the legislature.³³¹ On April 12, 1974, in Rottschaefer Lounge of Fraser Hall, Governor Wendell Anderson signed the bill into law.³³²

The 1974 legislative session really had been a critical one for the new law school building proposal. Arduously, it had wound its way to a successful conclusion.

g. The Final Round—A Construction Appropriation in 1975

To some, the 1974 legislative appropriation for working plans and drawings for the new law school building may have seemed like the successful end of the battle. The appropriation constituted, at last, a legislative endorsement of the law school's proposal for a new building on the West Bank, and seemed to embody a favorable decision on most of the major issues in the proposal's long history. But the law school proponents, remembering that the 1969 legislature had made a similar appropriation, knew that the controversy was not yet at an end. They continued to be concerned about the remaining tasks: the development of suitable working plans for the building, the securing of construction funds, and finally, the construction itself.

The first priority in the spring and summer of 1974 was to prepare schematic drawings of the new building. Since 1971, when the first plans had been completed with the \$80,000 appropriation by the 1969 legislature, supplemented by Law Alumni contributions totaling \$25,000, several additional reductions in size and program had been made. Consequently, a new schematic design was necessary before the architect could prepare final working drawings.

329. See Letter from Alderman T. Johnson to Dean Carl A. Auerbach (Mar. 28, 1974) ("Sorry for any anxieties that any eleventh hour activities may have caused you . . . [I only wanted] the University to develop a comprehensive land use plan for the East Bank so as better to define its relationship with the surrounding community.") (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

330. See 1974 JOURNAL OF THE SENATE, *supra* note 322, at 6146.

331. See *id.*; 1974 JOURNAL OF THE HOUSE, *supra* note 320, at 7062. See also Act of Apr. 11, 1974, ch. 516, § 2(2), 1974 Minn. Laws 1281.

332. See Memorandum from Dean Carl A. Auerbach to the Faculty (Apr. 12, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

The threshold problem was determining the size of the building. When the 1973 request, made again in 1974, was prepared, the projected inflation rate for the proposal had been six percent. In the intervening two years, however, the inflationary spiral had dramatically intensified, so that by the summer of 1974 the projected rate of inflation to the mid-point of construction had risen to sixteen percent. This meant that construction costs of the building, estimated in the 1974 request at \$10 million, would now be about \$12 million.³³³ But the 1974 legislative appropriation had specified "working drawings for a \$10 million law school building."³³⁴ Could the law school take the higher rate of inflation into account and plan for the same building as that requested in 1974 but at a higher cost? Or did the higher inflationary rate require that the law school cut its proposal again? Throughout the summer of 1974 this issue was debated by law school and central administration officials.³³⁵ Finally, another compromise was reached. The law school, having cut its 1969 proposal of 280,000 gross square feet (g.s.f.) to 255,449 g.s.f. in 1971 and 245,000 g.s.f. in 1974, made one more cut to 236,048 g.s.f.³³⁶ In return, the central administration agreed to take plans to the legislature for a building costing \$550,000 more than had been contemplated in the 1974 request.³³⁷

A second concern in the summer and fall of 1974 was, of course, the upcoming legislative campaign. In addition to the now almost routine political preparation,³³⁸ Dean Auerbach was worried about

333. See Memorandum from E. Wheeler to Law School Building Advisory Committee (Aug. 19, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

334. Act of Apr. 11, 1974, ch. 516, § 2(2), 1974 Minn. Laws 1281.

335. See, e.g., Memorandum from E. Wheeler to Law School Building Advisory Committee (Aug. 19, 1974), *supra* note 333; Memorandum from Vice President James Brinkerhoff to Dean Carl A. Auerbach (July 1, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Memorandum from Dean Carl A. Auerbach to Vice President James Brinkerhoff (July 1, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Memorandum from Vice President James Brinkerhoff to Law School Building Advisory Committee (June 20, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

336. See Memorandum from Dean Carl A. Auerbach to Vice President James Brinkerhoff, *supra* note 335.

337. See Explanation of the University of Minnesota's Request for \$12.88 million for a New Law Building (n.d.) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

338. One reflection of the persistence and the routineness of the law school's political preparations can be seen in a letter from John Spellacy to Dean Carl A. Auerbach shortly after the 1974 session was concluded. Spellacy, a Grand Rapids attorney, was asked several times over the years by law school officials to talk to Senator Arnold about the proposal. In response to one of these requests, Spellacy wrote, "I appreciate

another problem. The legislative rider adopted in the closing hours of the 1974 session, though freeing the law school planning funds for immediate expenditure, made further legislative building appropriations contingent upon the University's preparation of a comprehensive land use plan for its Twin Cities campus.³³⁹ The fate of the law school's 1975 construction funds request would be directly tied to the successful completion of the University's land use study. Dean Auerbach feared that the study would not be completed according to the legislature's mandate and that the entire University building program, including the law school, would suffer. Repeatedly, he wrote to central administration officials, telling them of his fear and urging them to put more effort into the study.³⁴⁰ Although Auerbach's concern was not without foundation, this undoubtedly did little to improve relations with the central administration.

Indeed, Auerbach's fears were realized when the University failed to produce the required study by the statutory deadline of February 15, 1975. Although a status report was submitted in its place, the study itself was still not completed even by the end of the legislative session. To many legislators this was an affront—one they were eager to answer by enforcing the “no new building money” contingency in the bill that had mandated the land use study. Thus, as Dean Auerbach feared, several legislators considered denying the law school construction appropriation as a means of communicating to the University that legislative mandates were to be taken seriously.³⁴¹

that Senator Norbert Arnold is doing everything humanly possible to block the construction of the new law school. I have talked to him so many times that I feel it would be a waste of time to talk further—but I will . . .” Letter from John Spellacy to Dean Carl A. Auerbach (Apr. 17, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

339. See Act of Apr. 11, 1974, ch. 516, § 2(4), 1974 Minn. Laws 1281-82.

340. See Letter from Dean Carl A. Auerbach to Vice President James Brinkerhoff (Oct. 18, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean Carl A. Auerbach to Harold Chase (June 12, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

341. See, e.g., Transcript of Senate Floor Debate on H.F. 1810, at 5 (May 19, 1975) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota) (remarks of Senator Spear); *id.* at 7 (remarks of Senator Tennesen). A letter from Dean Auerbach to Senator Davies, written after the session, summed up the law school's position on the matter:

As you undoubtedly may have gathered, I do not disagree with the criticisms you voiced against our central administration during the hearings before your subcommittee. The status report submitted in response to the 1974 legislative mandate was shameful. President Magrath knows how I feel about this matter. But I could not see why the law school should be made to pay for the sins of omission and commission properly attributable to others.

The failure to complete the land use study was not the only offense to legislative leaders in the University's handling of the 1975 law school request. A second affront involved the presentation of schematic drawings to the chairmen of the House Appropriations Committee and the Senate Finance Committee. A section of the 1974 legislation that had appropriated the planning funds required that such a presentation be made prior to the preparation of the final drawings.³⁴² Although the recommendations, if any, of the chairmen of these committees were not binding on the course of further planning, the presentation was an important means of ensuring the support of the legislative leaders for the future request for construction funds. This requirement was unfortunately neglected,³⁴³ and, after the schematic drawings received the approval of the Regents in December 1974, working plans were immediately begun.

Informed of the proposal's advanced stage by a letter from University Vice President James F. Brinkerhoff, Chairmen Norbert Arnold and Fred Norton were distressed. Representative Norton wrote back:

I am surprised to learn from your letter . . . that the University has engaged in developing working drawings and bid documents for the law school building without prior presentation and approval of schematic plans as required by laws of 1974, Chapter 516, Section 4.

. . . I am requesting that you cease any further work on the law school project until you have presented and received approval of schematic plans.³⁴⁴

University officials moved quickly, and the presentation was held within a day of the date of Representative Norton's letter. With the approval of Representative Norton and Senator Arnold, the University then returned to planning the building.³⁴⁵

By the time the schematic plans were presented to the legislative

Letter from Dean Carl A. Auerbach to Senator J. Davies (May 27, 1975) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

342. Act of Apr. 11, 1974, ch. 516, § 2(4), 1974 Minn. Laws 1281-82.

343. Dean Auerbach had attempted to avoid this development, as he had attempted to avoid the land use study problem, by a memorandum to the Law School Building Advisory Committee reminding them of the obligation to report to legislative leaders. See Memorandum from Dean Carl A. Auerbach to Law School Building Advisory Committee (Oct. 22, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

344. Letter from Representative Fred C. Norton to Vice President James Brinkerhoff (Jan. 14, 1975) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

345. See Memorandum (Jan. 17, 1975) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

leadership in January 1975, the legislature had begun its 1975 session. Over the next four months and with increasing intensity, the law school proposal was again reargued. In this, the final drive, however, the old debate focused on new issues.

Notably, the issue of accommodating the law school's program in existing buildings had been largely put to rest in the 1974 session. Controversy in 1975 centered on the size of student enrollment. The law school's proposal called, as it had since 1969, for an expansion in enrollment from 750 to 1,000 students. Some legislators expressed concern, as they had since 1969, that this would cause an oversupply of lawyers in the state. But significantly, the law school's 1975 argument had changed a bit in response to intervening events. While the sustained demand for legal education, the ABA editorial endorsement of an open admissions policy among the nation's law schools, and the continuing placement success of Minnesota graduates were still the basis of the law school's justification for expansion, an additional argument was that the size of the University of Minnesota Law School was no longer determinative of, or even very influential in affecting, the number of law graduates trained in the state.

Indeed, the unprecedented growth in demand for legal education, coupled in part with the University's inability to respond, had fostered the growth of other law schools in Minnesota. William Mitchell College of Law had expanded from an enrollment of 350 in 1969 to an enrollment of 1,090 in 1975.³⁴⁶ In 1972, Midwestern College of Law (later Hamline University School of Law) had opened its doors, and by 1975 it enrolled 550 students. As a consequence, the University's share of the state's law student enrollment had dropped from sixty-four percent in 1969 to about thirty percent in 1975.³⁴⁷ As a result, law school proponents noted that the contemplated enrollment expansion at the University law school was really rather inconsequential in the overall picture of law school enrollment in the state. Even if legislators were concerned about the number of lawyers soon to be on the market, they could not significantly control that number by limiting the size of the University law school. And, since the demand for legal education would be satisfied in some fashion, the law school proponents argued that the state should satisfy as much of the demand from its citizens as it could, consistent with maintaining high standards of quality.

A second and somewhat new issue in the 1975 legislative debate was the size of the proposed law school building. While the size and

346. See note 293 *supra*.

347. Data from 1969 ANNUAL REVIEW OF LEGAL EDUCATION and 1975 ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR.

cost of the building had been a general issue since the beginning of the proposal's legislative history, these issues were to receive more attention now that the basic decision to build had tentatively been made. In particular, legislators were concerned with the fact that the plans then called for a student-faculty ratio of seventeen to one, a significant and expensive improvement over the existing ratio of twenty-two to one.³⁴⁸ Legislators were wary lest the building project, by providing space for so many new faculty, implicitly commit them to a large additional and recurring salary expense in the law school. Looking elsewhere, leaders in the House made the point that ratios of twenty to one were not out of line with the most eminent of Minnesota's competitors.³⁴⁹ To this, the law school responded as it had from the beginning, that the phenomenon of high student-faculty ratios was an adverse by-product of the case method of instruction that was experienced by all law schools and was stifling reform measures everywhere.

As the legislative session slowly got under way, Governor Anderson recommended, in his January budget message, that the Regents' law school building request of \$12.88 million be granted in full.³⁵⁰ During the next three months, there was little legislative discussion of the matter. Public discussion continued, however, and both the *St. Paul Pioneer Press* and the *Minneapolis Tribune* again carried editorials supporting the proposal.³⁵¹ The Board of Governors of the Minnesota State Bar Association adopted another resolution urging legislative support of the law school proposal.³⁵²

Finally, as the session neared adjournment, a flurry of activity began. On May 12, 1975, Representatives Norton, Sabo, Searle, Faricy, and Smith introduced House File 1810,³⁵³ which authorized a construction and equipment appropriation for the law school building

348. The original proposal of the Decades Ahead report had been based on a student-faculty ratio of 15 to 1. The 1973 legislative request had modified this proposal to a 17 to 1 ratio. See Memorandum from Dean Carl A. Auerbach to Harold Chase re: Law School Budget Proposals for 1975-77, at 13, 14 (Feb. 19, 1974) (on file at the Deans' Office, University of Minnesota Law School, Minneapolis, Minnesota).

349. See *Report on U. Law Building Heard by House Committee*, Minn. Daily, Jan. 16, 1975, at 3, col. 1; Memorandum from Vice President James Brinkerhoff to Dean Carl A. Auerbach, *supra* note 335.

350. See PROPOSED BIENNIAL CAPITAL BUDGET, 1975-1977, PRESENTED BY GOVERNOR WENDELL R. ANDERSON TO THE SIXTY-NINTH LEGISLATURE, at 38 (Jan. 1975).

351. See *A New University Law Building*, Minneapolis Tribune, Feb. 20, 1975, § A, at 4, col. 1; *University Law School*, St. Paul Pioneer Press, Feb. 7, 1975, § C, at 4, col. 3.

352. Resolution adopted Feb. 8, 1975 (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

353. See JOURNAL OF THE HOUSE, 68TH MINN. LEGIS., 1975 SESS. 2755-56 [hereinafter cited as 1975 JOURNAL OF THE HOUSE].

of \$10 million—some \$2.88 million short of the Regents' request. Two days later, an amendment was offered and approved in the Education Division of the Appropriations Committee to increase the construction amount to \$11.88 million,³⁵⁴ still one million dollars short of the law school's request. On the next day, Thursday, May 15, the full House Appropriations Committee approved the bill at the \$11.88 million figure.³⁵⁵ Meanwhile, the Senate committee had approved a \$12.88 million version of the proposal.³⁵⁶

The signs of rapid progress were far from reliable guarantees of future success, however. By constitutional requirement,³⁵⁷ the legislature faced adjournment at midnight on Monday, May 19, 1975. Much of the session's most important work, including the education aids bill and the revenue act, remained to be enacted. Thus, any bill, if sidetracked, could be lost for the session. Moreover, another constitutional provision required that public bonded debt, such as that proposed for the construction of the law school, be incurred only if the authorizing legislation had been adopted by three-fifths of the members of each house of the legislature.³⁵⁸ A simple majority in either house would not suffice. Consequently, there was little margin for error in steering the proposal through to successful enactment as law. The tensions surrounding those final days were understandably severe. And the potential of a conference committee, upon which the law school proponents had hoped to rely in increasing the House appropriation to the Senate amount, began to be seen as a threat rather than as an aid.

It was within this context that a compromise was worked out between House leaders and the law school proponents. Still concerned with the expense of the proposal and particularly with the implied commitment to provide for a larger faculty, the House leadership agreed to increase its appropriation from \$11.88 million to \$12.3 million if the law school would agree to eliminate from the proposal a planned fifth floor designed to house twenty-one additional faculty offices and support services. The \$580,000 cut from the law school's request reflected roughly the cost of the fifth floor. Without it, the new building could accommodate only forty-five faculty members

354. See Memorandum from Dean Carl A. Auerbach to the file (May 13, 1975) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

355. See BULLETIN #2 (May 14, 1975) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

356. See Memorandum from Dean Carl A. Auerbach to the file (May 17, 1975) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

357. MINN. CONST. art. IV, § 1.

358. See *id.* art. IX, § 6(2).

instead of the sixty-six that had been proposed. Concomitantly, it was understood that such a limitation would result in a reduction of student enrollment in the new building from 1,000 to 800.³⁵⁹ After years of planning for and defending the 1,000-student facility, the law school administration was faced with a most difficult choice: accept the compromise or risk losing the entire proposal for at least another year. Reluctantly, the law school proponents agreed to the compromise.

Yet the battle was still not over. On Friday, May 16, House File 1810, which included the law school appropriation as amended to reflect the compromise, passed the House of Representatives by a vote of eighty-two to forty-six,³⁶⁰ only one vote above the three-fifths minimum required for a bonding bill. The next evening, the bill came up for discussion and a final vote in the Senate. Several amendments were offered and rejected for portions of the bill relating to other building projects. Then came a crucial motion, made by Senator Robert Brown, to amend the bill by deleting the law school appropriation in its entirety.³⁶¹ The motivations for such an amendment were diverse. The high cost of the law school proposal, the University's difficulties in its relationship with the legislature arising out of the land use study mandate, a continuing concern over the number of law graduates in the state, an adverse reaction to the high-powered lobbying campaign by the law school, general hostility to lawyers, and general opposition to University building proposals may all have played a part.

Senator Brown's motion engendered considerable debate. Concerned that the motion might be approved, Senator Tennesen, the bill's chief author, moved to preserve the bill, and the law school's appropriation, by tabling it. This was approved.³⁶²

That left, however, only a single legislative day before adjournment. Frantically, the law school went once more to its political well. Senators Hubert H. Humphrey and Walter F. Mondale, Congressman Donald Fraser, Governor Wendell R. Anderson, and others were called upon to urge the support of still-recalcitrant legislators. Dean Auerbach, who had spent the better part of his political life in the service of the liberal movement that was then in power in Minnesota, later acknowledged that he had expended his entire "political capital

359. See Minutes of the University of Minnesota Law School Faculty (May 27, 1975).

360. See 1975 JOURNAL OF THE HOUSE, *supra* note 353, at 3208.

361. See JOURNAL OF THE SENATE, 68TH MINN. LEGIS., 1975 SESS. 2560 [hereinafter cited as 1975 JOURNAL OF THE SENATE].

362. *Id.* at 2561.

on this campaign."³⁶³

Finally, late in the afternoon of Monday, May 19, 1975, House File 1810 was again taken from the Senate table.³⁶⁴ Again motions not affecting the law school appropriation were made and rejected. And again the motion to delete the law school's entire appropriation was considered. Tensions mounted as discussion of the amendment continued. Debate had already been unexpectedly acrimonious. Anti-law school and anti-University sentiments were running high. Finally, the amendment was put to a vote and failed to pass by a vote of twenty-three to forty.³⁶⁵ Although they were pleased with this result, law school proponents were concerned by the tally. Because of the bonding nature of the bill, three-fifths of the Senate, or forty-one votes, had to be cast in its favor for final passage.³⁶⁶ Yet the Brown amendment had been opposed by only forty votes. Would there be the needed additional vote when the final vote was called?

Finally, Senator Tennesen moved the adoption of the bill. The vote was taken, and House File 1810 passed, forty-one to twenty-five.³⁶⁷ Without a single vote to spare, the new law school building appropriation had been approved. On June 4, 1975, Governor Anderson signed the bill into law,³⁶⁸ and, after seven long years of legislative struggle, the new law school building was finally a reality. The major impediment to the University of Minnesota Law School's pursuit of excellence was finally removed.

3. Construction

On February 19, 1976, ground was broken for the construction of the new law school building on the West Bank of the University of Minnesota, Minneapolis campus.³⁶⁹ During the next two years, the legislative appropriation and alumni contributions were transformed into a beautiful and highly functional new law school facility.³⁷⁰

The new building includes offices for forty-five faculty members, as well as twenty classrooms and seminar rooms. One classroom seats

363. Interview with Carl A. Auerbach, Dean of the University of Minnesota Law School, in Minneapolis, Minnesota (Jan. 15, 1979).

364. 1975 JOURNAL OF THE SENATE, *supra* note 361, at 2633.

365. *Id.* at 2634, 2635.

366. *Id.* at 2635.

367. *Id.* at 2636.

368. Act of June 4, 1975, ch. 436, 1975 Minn. Laws 1568.

369. Program, University of Minnesota Law School Building Ground-Breaking Ceremony, *supra* note 168.

370. The final accounting for the construction project was completed in April 1979. The total cost of the new Law School building was \$14.3 million. Interview with Carl A. Auerbach, Dean of the University of Minnesota Law School, in Minneapolis, Minnesota (April 11, 1979).

200 students; four seat 120 students; five seat sixty students; and ten seminar rooms seat twenty to thirty students. This large number of small classrooms and seminar rooms is designed to permit the law school to offer an increased number of small-enrollment, advanced courses and seminars to upper class students. Tiered and U-shaped seating maximizes interaction between instructor and students. The largest classroom is also equipped as an appellate courtroom, allowing students to witness arguments held by visiting appellate courts.³⁷¹ In addition, two trial courtrooms accommodate the school's trial practice and moot court programs and allow actual trials to be held in the school. For convocations of the entire student body, an auditorium seating up to 1200 persons adjoins the law school in adjacent Willey Hall.

A unique design feature of the new law school building is a series of conversation areas outside of the classrooms. These areas offer students a place to sit and review their materials before entering the classroom, as well as a place for the instructor and students to continue discussions that carry over after class has ended. These discussion areas and the several lounges located throughout the building are designed to encourage the learning and discussion of legal principles outside as well as inside the classrooms.

The new building also offers a spacious home to the nation's seventh largest law school library.³⁷² The library has shelving for 600,000 volumes,³⁷³ about 200,000 more than the school's 1979 collection.³⁷⁴ It also provides 700 individual study spaces, of which 300 are at tables in a large reading room and 400 are individual carrels.³⁷⁵ Each of the library's four floors contains a core collection of the most frequently used reporters and statutes. A similar collection is located in the faculty reading room adjoining faculty offices. The new building also includes a special room named in honor of the law school's distinguished former librarian, Arthur C. Pulling,³⁷⁶ to display its extraordinary collection of rare books.

The new building contains a large area for its various clinical

371. Both the Minnesota Supreme Court and the Eighth Circuit Court of Appeals have heard oral arguments at the law school since the new building was occupied.

372. Dedication Program, University of Minnesota Law School, at 2 (April 14, 1978) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

373. *Id.*

374. Interview with George S. Grossman, Director of the Law Library, University of Minnesota Law School, in Minneapolis, Minnesota (Apr. 11, 1979).

375. Dedication Program, *supra* note 372. In addition to these study spaces, there are twenty group discussion rooms, each seating six persons.

376. See Stein, *The Pirsig Years*, *supra* note 104, at 315 n.89; Stein, *The Fraser Years*, *supra* note 78, at 1174, 1163; Stein, *The Vance Years*, *supra* note 61, at 871.

education programs and the offices of the State Public Defender. The return of the clinical programs to the law school building from the separate facility in which they were housed for the last several years will assist the school in integrating the clinical courses with the more traditional coursework. There are also spacious offices for the *Minnesota Law Review* and *Quaere*, the law school newspaper, as well as an office for other student organizations.

The unusual and attractive exterior building design is dictated, in a large measure, by its function. To provide the largest number of books nearest the largest number of readers in the main reading room, the first floor contains the greatest area of space. Each successive floor is set back from the floor below. The basic shape of the main body of the building is triangular, matching the lines of the river bank and Willey Hall, with which the law building is physically connected. However, inasmuch as the space contained by the hypotenuse of the triangle is all classroom and library space, for which an angular wall is not efficient, the line of the building is a series of rectangles producing a saw-tooth effect. When combined with the set-back on each floor, the south side of the building presents an interesting clustering of cubes, with a variety of lines and angles changing in appearance throughout the day as the sun creates ever-changing shadow patterns.

An eighteen-inch layer of earth is spread over the roof as insulation and is planted with spreading yews. These roof gardens play a significant role in making the building highly energy-efficient, providing the inhabitants with an attractive view, and separating them from the traffic and the concrete of the West Bank campus. For this and other design features the building has won a number of architectural awards.³⁷⁷

4. Dedication

Timing the law school's move to its new building was difficult. As the building could not be completed before the beginning of the 1977-1978 academic year, a mid-year move was inevitable. By starting school two weeks early in the fall, an extended holiday vacation

377. The new law school building has won the following architectural and design awards: Merit Award, 1978, Minnesota Society of the American Institute of Architects; Honorable Mention, 1978, Energy Conservation Award, Owens-Corning Fiberglas Corporation; Award, 1978, Minneapolis Committee for the Urban Environment; Lighting design award, 1978, and Edwin F. Guth Memorial Lighting Design Award, 1978, Illuminating Society of North America; Highest Honors Award, 1977, *American School & University Magazine*. Award Information from the Office of the Assistant Vice President for Physical Planning, University of Minnesota, Minneapolis, Minnesota.

was scheduled as the time to make the move. In less than a month, over 370,000 volumes of the library's collection³⁷⁸ and all the faculty and administrative offices were moved across the river to their new home on the West Bank.

With the moving nearly completed but with construction continuing, the first classes were held in the new building on January 16, 1978.³⁷⁹ Throughout the winter quarter, the work and study of the law students and faculty were punctuated with pounding and drilling. With the dedication ceremony scheduled for April 4, 1978, the construction pace was necessarily frantic.

When April 4th arrived, the new building was ready. Gathered together on that day to dedicate the new building was a distinguished group of dignitaries, alumni, friends, faculty, and students of the law school.³⁸⁰ After welcoming remarks by Dean Auerbach, Law School Student Council President Marcus Williams, Governor Rudy Perpich, and Senator Wendell Anderson (a 1960 graduate of the school), the assembly greeted F. Kelton Gage, President of the Minnesota State Bar Association, and Minnesota Supreme Court Chief Justice Robert J. Sheran, who spoke briefly on behalf, respectively, of the Minnesota bar and judiciary. The principal speakers were United States Supreme Court Chief Justice Warren E. Burger and Vice President of the United States Walter F. Mondale (a 1956 graduate of the law school). Both were awarded honorary degrees by University of Minnesota President C. Peter Magrath and Board of Regents Chairperson Wenda Moore.³⁸¹ Once again, as at the dedication of Fraser Hall some fifty-two years earlier,³⁸² the future of the law school looked very bright indeed.

C. CURRICULUM STUDY—THE PROPOSAL OF DEAN AUERBACH

As important as the new building is to the University of Minnesota Law School, its function is merely to house and facilitate the school's program of legal education. Consequently, Dean Auerbach and his faculty coupled their legislative building campaign with a continuing analysis of the law school's educational program. To a significant extent, the inadequacies of Fraser Hall had limited the school's ability to innovate in instruction. Dean Auerbach noted that

378. See *Law Library Leaves Fraser*, U. MINN. L. ALUMNI NEWS, Winter 1977, at 6.

379. *Law School Crosses River to New Building*, U. MINN. L. ALUMNI NEWS, Winter 1977, at 4.

380. Part of the crowd assembled that day came to attend a "counter-dedication." See text accompanying note 506 *infra*.

381. See *Dedication Program*, *supra* note 372, at 4.

382. See Stein, *The Fraser Years*, *supra* note 78, at 1177.

the school would never have a better opportunity to implement major curricular innovations than at the time of the move to the new building.³⁸³ Therefore, when success had been achieved in the building drive, Dean Auerbach asked the faculty to undertake a serious reexamination of the school's curriculum, and offered his own proposal for its consideration.³⁸⁴

In the mid-1970s, the call for study and reform of law school curricula was not unique to Minnesota; several nationwide studies of legal education were then being conducted as educators tried to better understand what law schools were and should be doing.³⁸⁵ Perhaps the major impetus for these studies was the fact that the legal profession for which law schools sought to educate their students had become an increasingly diverse and amorphous collection of careers. The continuing trend toward specialization in the practice of law and the increasing diversity of positions available to lawyers placed many strains on the scope and content of legal education. The more diverse the opportunities available to law graduates, the more diverse the expectations of law students for their legal education. Unable to be all things to all people, law schools were forced to be selective.

The nationwide focus centered on the second- and third-year curriculum. The first year of law school was almost universally devoted to teaching fundamental legal subjects and, through an examination of appellate decisions, the basic analytical thought processes of a lawyer. In accomplishing these objectives, the first-year curriculum was generally considered to be quite successful. The purposes of the second and third years of law school, however, were less well-defined. While law schools were seeking, in the main, to teach lawyering, not the law, they nevertheless also attempted to teach law. But just how much law they ought to teach, and in what areas, was unclear. And which other objectives, if any, should be achieved in those upper years was also uncertain. These unanswered questions created what University of Minnesota Law School Professor J. Morris Clark described as a nationwide "sense of malaise" concerning second- and third-year law school curricula.³⁸⁶

It was against this background that Dean Auerbach advanced his

383. See Auerbach, *Wouldn't You Rather Specialize?*, *Quaere*, Dec. 1976, at 3, col. 1.

384. See *id.*

385. See, e.g., H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* (1972); *Training for the Public Professions of the Law: 1971, A Report to the Association of American Law Schools*, 1 ASSOCIATION OF AMERICAN LAW SCHOOLS 1971, PROCEEDINGS § 1, Appendix I, at 74 (1971).

386. See Clark, *Legal Education Evaluation, Definition Urged*, *Quaere*, Dec. 1975, at 5, col. 1 (citing H. PACKER & T. EHRLICH, *supra* note 385).

proposal in the summer of 1976 for reform of the law school curriculum. The problems of the second and third year of law school, as he saw it, stemmed from a poor student-faculty relationship—one in which the students were not drawn into the intellectual stimulation experienced by faculty members in their study of the law. A symptom of this poor relationship was the distinctly anti-intellectual, anti-scholarly attitude that Dean Auerbach perceived in the student body. He noted that ever since his arrival at Minnesota some fifteen years earlier, he had “been disappointed and frustrated by the relative lack of intellectual interest in the study of the law on the part of so many of our students.”³⁸⁷ He deplored the anti-intellectual note in the demands of many students for increased emphasis on clinical education, as well as in some of the criticisms of legal education made by leaders of the bench and bar, who sounded a similar “overly-academic” complaint.³⁸⁸

The way to stimulate the intellectual interests of law students, in Dean Auerbach's view, was to restructure their relationships with the faculty to parallel that of other graduate programs at the University. The model was a relationship in which the graduate student and his or her professor would “collaborat[e] in [the] joint enterprise” of exploring one field of knowledge in great depth.³⁸⁹ To this end, Dean Auerbach proposed that the second- and third-year curriculum be reorganized into a number of areas of concentration, as determined by the interests of the faculty. These might include, for example, areas such as “The Transmission of Wealth” or “The Corporation in Modern Society.”³⁹⁰ Upon entering the second year, students would be assigned, insofar as possible in accordance with their preferences, to an area that would be the emphasis of their study for the next two years.³⁹¹

The goal of this division was not, however, to train students in specialities. The objective was more broadly educational. Students, through a deeper and more intense involvement in one area of the law, would be better trained for careers in any area of the law. As it was expected that no more than half of the student's second- and third-year credits would be earned within the area of concentration, the Dean did not feel that the proposal would unduly restrict the breadth of a student's legal background. Its major attraction, in his view, was that as students developed an in-depth scholarly, as well as practical, understanding of a particular field, they, and the profes-

387. Auerbach, *Wouldn't You Rather Specialize*, *supra* note 383.

388. *Id.*

389. *Id.* at 3, col. 2.

390. *Id.* at 3, col. 3.

391. *Id.*

sor with whom they worked, could *together* explore the limits of knowledge in the area to their mutual benefit.³⁹² For students and faculty alike, the proposal was intended to ensure the existence of the intellectual excitement that should characterize and energize the study of law. The Dean contemplated that each area of concentration would have its clinical component.

Dean Auerbach's proposal was offered as but one focus of the larger curriculum study he requested for the 1976-1977 school year.³⁹³ As a part of that study, five leading legal educators from across the country were invited to present their ideas on curriculum reform to faculty seminars, made possible with the financial support of the Partners in Excellence Fund. J. Willard Hurst, Professor of Law at the University of Wisconsin Law School; Robert A. Gorman, Professor and Associate Dean at the University of Pennsylvania Law School; Richard D. Schwartz, Professor and former Dean at the State University of New York at Buffalo School of Law; Thomas Ehrlich, Professor and former Dean at Stanford Law School (then President of the national Legal Services Corporation); and Eugene V. Rostow, Professor and former Dean at Yale Law School, each came and spent two intense days discussing their views on future challenges to legal education and their evaluation of recent innovations designed to meet those challenges.³⁹⁴

Insight into both the potential and the problems of Dean Auerbach's proposal was offered in a 1976 report by the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools.³⁹⁵ Discussing Dean Auerbach's contention that the reallocation of a relatively small amount of money to the law school would allow it to become a pioneer and innovator, the report concluded:

This is an ambitious project but one which should not be underestimated. Many law schools are experimenting but none has been able to take a realistic step. The Dean and the Minnesota Law School are at a unique point where they could try some experimentation in this area which might indeed result, as [the Dean] forecasts, in dramatically raising the quality of an already high quality school.³⁹⁶

392. *Id.*

393. *Id.*

394. See *The Seminars*, in NINTH ANNUAL REPORT TO THE PARTNERS IN EXCELLENCE, 1976, at 6 (University of Minnesota Law Alumni Association 1977).

395. See *North Central Association Says: Law School Could Become Outstanding*, *Quaere*, Nov. 1976, at 2, col. 1 (citing Report of the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools (1976)).

396. *Id.*

Yet, at the same time, the report noted several potential obstacles to the successful implementation of Dean Auerbach's proposed curriculum reform. One of these was lack of adequate budgetary support for an enlarged faculty,³⁹⁷ a necessary prerequisite to implementing the graduate school model of student-faculty relationships. Without the improvement in the student-faculty ratio implicit in the requested expansion to 45 faculty members for an enrollment of 800 students, the Dean's proposal, with its heavy emphasis on smaller classes, was an impossibility.

A second obstacle noted in the report was the coercion inherent in assigning students to an area of concentration not of their own choosing.³⁹⁸ If, as faculty study had shown, a significant number of students would be denied their first choice, this might endanger the idea. Unquestionably, the success of the proposal depended on student interest and motivation. To many of the faculty, such interest and motivation could not be expected of students assigned to areas of their second, third, or even lower preference.

Finally, the report noted that the Dean's far-reaching proposal could not be implemented without total faculty support.³⁹⁹ But the faculty, partly because of what it had heard in seminars about similar experiments elsewhere, partly because the funding necessary to implement the plan was not committed, and partly because of its concern over assigning students to areas of concentration that were not of their own choosing, did not fully support the proposal. This was reflected in the comments of one professor who, participating in a panel discussion of the proposed curriculum revision before the law school's Board of Visitors in April 1977, noted two disadvantages of the proposal:

First, there are two elements of coercion involved. A student would have to pick a major; he could not prepare to be a general practitioner. Also, a student might be forced to take his second or third choice of an area if the area of first preference were filled up.

Second, there are substantial start-up costs in terms of time in a switch-over to any new program. Add to that the time expended in dismantling such a program if it's unsuccessful, as was the program at Yale, and you have a strong disadvantage.

The benefits of the proposed program should be unique and sizeable enough to outweigh these disadvantages. They are not unique. Each of the advantages can be achieved under the current

397. *Id.* The Association Report said that funding of this expansion had already been achieved. This was inaccurate.

398. *Id.*

399. *Id.*

structure, given adequate budgetary resources, and the addition and retention of good faculty members.⁴⁰⁰

As a consequence of these faculty concerns, the proposal, first advanced in the summer of 1976, remained unadopted at the time of Dean Auerbach's resignation in 1979.

Perhaps in this the University of Minnesota Law School missed an excellent opportunity to experiment with an innovative solution to significant problems in its educational program. On the other hand, the proposal may have been simply too sweeping, involving too many risks to justify its adoption. At any rate, the problems it was designed to address continue. Yet, out of the discussion and ferment of this period may yet come some further response. It is too early now to judge.

D. THE FACULTY

A tradition of faculty excellence had long been a hallmark of the University of Minnesota Law School. Scholars of distinction had continuously served on the faculty since the school's ascension to excellence in the 1910s.⁴⁰¹ Perhaps the most disturbing aspect of the prolonged battle for the new law school building was the threatened loss of this tradition. Indeed, in the midst of the new building debate, Dean Auerbach noted that the law school was experiencing competition in faculty appointments from schools with which it had never before considered itself in competition.⁴⁰² Unwilling to lower its qualitative standards, the law school consequently did not fill all of its faculty vacancies during this period.

Those faculty members who were added during the years of the new building campaign were, however, outstanding. Now entering their most productive years of scholarship, the members added during this period represent major strengths on the current faculty. In 1972, for example, the final efforts of Dean Lockhart's administration yielded the additions of Professors Robert E. Hudec,⁴⁰³ Barry C.

400. *Board of Visitors Spends Busy Day at Fraser Hall*, U. MINN. L. ALUMNI News, Spring 1977, at 5, 6 (quoting Professor David Bryden).

401. See Stein, *The Lockhart Years*, *supra* note 19, at 859-69; Stein, *The Pirsig Years*, *supra* note 104, at 315-18; Stein, *The Fraser Years*, *supra* note 78, at 1168-77; Stein, *The Vance Years*, *supra* note 61, at 867-72.

402. See text accompanying note 312 *supra*.

403. Professor Hudec graduated from Yale Law School, where he had been Editor-in-Chief of the *Yale Law Journal*, in 1961. He clerked for Justice Potter Stewart of the United States Supreme Court for two years, worked in government for two years, and taught at Yale for six years before coming to Minnesota. His special expertise is commercial law. Professor Hudec is the author of *THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY* (1975). See 1978-79 DIRECTORY, *supra* note 17, at 396.

Feld,⁴⁰⁴ and Assistant Dean Patricia Ann Lydon.⁴⁰⁵ Professors Melvin B. Goldberg and James P. Cullen were also added to direct the Legal Aid to Minnesota Prisoners (LAMP) clinical program.⁴⁰⁶ In the next year, Carl A. Auerbach's first year as permanent Dean, Professors Roger C. Park⁴⁰⁷ and George S. Grossman,⁴⁰⁸ who replaced the retiring Bruno H. Greene as Director of the Law Library,⁴⁰⁹ joined the faculty.

404. Professor Feld received his law degree from the University of Minnesota Law School in 1969, after which he received a Ph.D. in Sociology from Harvard University in 1973. For a time he taught both in the law school and in the interdisciplinary Program in Criminal Justice Studies. In 1975, his appointment in the law school became full time. His specialty is criminal law and procedure. Professor Feld has written *NEUTRALIZING INMATE VIOLENCE: JUVENILE OFFENDERS IN INSTITUTIONS* (1977) and (with Levy) *RIGHTS OF MINORS* (1977). See 1978-79 DIRECTORY, *supra* note 17, at 295.

405. Assistant Dean Lydon graduated from the University of Minnesota Law School in 1971. After a year with the Federal Trade Commission, she returned to the law school in 1972 to become Assistant Dean for Admissions and Placement. In 1974, Dean Lydon left Minnesota to be Assistant Dean and Director of Admissions at Harvard Law School. She later entered the private practice of law in New York City. See Stein, *The Lockhart Years*, *supra* note 19, at 889.

406. See text accompanying notes 462-483 *infra*.

407. Professor Park, a 1969 graduate of Harvard Law School, was Case Editor of the *Harvard Law Review*. Professor Park came to Minnesota in 1973, after a year's clerkship with the First Circuit Court of Appeals and three years of private practice in Boston. An expert in the areas of civil procedure, evidence, and trial practice, Professor Park has pioneered the development of computer-aided teaching techniques and has produced *COMPUTER-AIDED EXERCISES ON CIVIL PROCEDURE* (1976). See 1978-79 DIRECTORY, *supra* note 17, at 572. Professor Park was voted Teacher of the Year in 1978. See *Park is Top Prof*, U. MINN. L. ALUMNI NEWS, Spring 1978, at 11.

408. Professor Grossman, having acquired an LL.B. degree from Stanford University in 1966 and an M.S.L.S. degree from Brigham Young University in 1971, came to Minnesota in 1973 after spending two years each at the University of Pennsylvania Law School and the University of Utah Law School. Arriving at Minnesota while plans for the new building were still in the developmental stage, Professor Grossman, like Professor Greene before him, played a major role in planning the new law library. Professor Grossman announced his resignation at the end of the 1978-79 year to assume the directorship of the law library at Northwestern University Law School. See 1978-79 DIRECTORY, *supra* note 17, at 356.

409. No historical description of the University of Minnesota Law Library would be complete without mention of the major contributions of Caroline Brede, Assistant Librarian and Associate Professor, and Arlette M. Soderberg, Reference Librarian and Assistant Professor.

Professor Brede first came to the library in 1935 and served for seven years with Arthur C. Pulling, Minnesota's first law librarian. In her 45-year tenure, which continues today, she has served with distinction the library's four subsequent directors and generations of faculty and students. In the 1979-80 academic year, she is Acting Director of the law library.

Professor Soderberg came to Minnesota in 1946 after teaching at the high school and college level for seven years. She received her B.S.L.S. degree in 1950. In her 33 years at Minnesota, she has served as Acquisitions Librarian, Circulation Librarian and, for the past 25 years, Reference Librarian. Through her expertise, the great

In 1974, two more young scholars, Professors J. Morris Clark⁴¹⁰ and Peter Gable,⁴¹¹ were added.

At this same time, however, the law school faculty suffered painful losses through death or retirement. Among these was the tragic death of Professor Allan H. McCoid in the summer of 1972. A member of the Minnesota faculty since 1956,⁴¹² Professor McCoid was not only an outstanding teacher and scholar, but also a dedicated leader of the faculty deliberations. His talents and perceptions were sorely missed.⁴¹³ Professor Candler S. Rogers, who had come to the law

resources of Minnesota's Law Library have been made more easily available to innumerable research endeavors, including this series of articles.

See 1977 BIOGRAPHICAL DIRECTORY, AMERICAN ASSOCIATION OF LAW LIBRARIES (1977), at 12, 98.

In addition to Professors Brede and Soderberg, the law school is fortunate to have on its staff other professionals who have served the school with dedication for many years: Marvin Anderson, Assistant Reference Librarian; Vera Carlsson, Acquisitions Librarian; Joseph Levstik, Foreign Law Librarian; Phyllis Marion, Catalog Librarian; Nancy McCormick, Circulation Librarian; and Mila Rush, Documents Librarian. In 1978, Robert Stumm retired as Circulation Librarian after 12 years with the law school library.

410. Professor Clark was a classmate of Professor Park at Harvard Law School, where they graduated together in 1969. At Harvard, Professor Clark, in addition to serving as Articles & Book Review Editor of the *Harvard Law Review*, wrote three student notes and a seminar paper that the *Harvard Law Review* published as a signed article. After clerking for a year, Professor Clark served four years with Vermont Legal Aid, two of which were in discharge of an alternative service obligation as a conscientious objector. He joined the University of Minnesota Law faculty in 1974, teaching Constitutional Law, Legal Professions and Federal Jurisdiction. 1978-79 DIRECTORY, *supra* note 17, at 224. Professor Clark quickly distinguished himself as a dedicated and concerned teacher. A deeply religious man, he reached out to personally touch a great many in the law school community. Tragically, at age 34, he died of a heart attack on January 20, 1979. See *Morris Clark, 34, Dies Unexpectedly*, *Quaere*, Mar. 1979, at 1, col. 1; *J. Morris Clark: He Left a Model For Us All*, *Quaere*, Mar. 1979, at 4, col. 1. A memorial to Professor Clark appears at 63 MINN. L. REV. 761 (1979).

411. Professor Gable, who graduated from Harvard Law School, taught at the law school for one year and then assumed a fellowship at the Center for the Study of Law and Society at the University of California at Berkley.

412. See Stein, *The Lockhart Years*, *supra* note 19, at 860-61 n.241.

413. Professor McCoid was a member of the law school faculty for 17 years before his tragic death in 1973, at the age of 47. A 1972 *magna cum laude* graduate of the Harvard Law School, he taught at the University of California at Los Angeles Law School before joining the Minnesota faculty.

Professor McCoid was a superb classroom teacher, as well as a nationally recognized scholar. His extraordinary talent for teaching was annually evidenced by the large enrollment of students in all of his classes. A film was made of his teaching as part of a series of films on Great Law Teachers. Professor McCoid enjoyed national esteem as a scholar, particularly in the areas of labor law and medicine and law. His publications included: McCoid, *The Battered Child and Other Assaults upon the Family*, 50 MINN. L. REV. 1 (1965); McCoid, *Proposal for an "Ideal" Course in Law and Medicine*, 16 J. LEGAL EDUC. 433 (1964); McCoid, *State Regulation of Labor-*

school for a one-year visit in the fall of 1972, also met an untimely death after just a few months at the school.⁴¹⁴ At the end of the 1973-1974 school year, the law school suffered, through retirement, the losses of its long-time Dean, then Professor William B. Lockhart;⁴¹⁵ the Director of its law library, Professor Bruno H. Greene;⁴¹⁶ and Professor Stanley V. Kinyon,⁴¹⁷ whose teaching career at the school

Management Relations: The Impact of Garmon and Landrum-Griffin, 48 IOWA L. REV. 578 (1963); McCoid, *Notes on a "G-String": A Study of the "No Man's Land" of Labor Law*, 44 MINN. L. REV. 205 (1959); McCoid, *The Care Required of Medical Practitioners*, 12 VAND. L. REV. 549 (1959); McCoid, *The Third Person in the Compensation Picture: A Study of the Liabilities and Rights of Non-Employers*, 37 TEX. L. REV. 389 (1959); McCoid, *A Reappraisal of Liability for Unauthorized Medical Treatment*, 41 MINN. L. REV. 381 (1957).

However, the respect in which Professor McCoid was most deeply missed by his colleagues was in the leadership that he provided to the faculty. He served regularly as chairman of important law school committees and was frequently called upon to chair ad hoc studies of major issues confronting the law school. *See, e.g.*, note 193 *supra*; Stein, *The Lockhart Years*, *supra* note 19, at 880. His Minnesota colleague, Professor Charles W. Wolfram, captured this quality of Allan McCoid in a moving memorial tribute:

His esteem for the law and for this place as a place in which law is learned went beyond conversation, as important as that was. He was immensely tireless and worked fantastic hours of personal commitment in attempts to deal with the institutional and other challenges and opportunities that confronted us over the years. Perhaps we took too much for granted the McCoid legend of stupendous effort, long nights, lengthened work weeks during which he toiled on problems that were common to all of us — the curriculum, planning, the new building request, appointments, tenure, the entire multitude of issues that confronted us. Almost whenever a crisis arose within the law school that seemed to need special skill, and at the same time a patient hand, it was invariable almost that Allan would be charged with bringing in at least an initial solution of it, usually as chairman of a committee to which the problem had been referred. His skill in producing a wise yet workable solution to most of these problems was universally acknowledged.

Allan H. McCoid: A Tribute, compiled by the Faculty of the University of Minnesota Law School, at 8-9 (1974) (on file in the Rare Book Room, University of Minnesota Law Library, Minneapolis, Minnesota). *See generally id.*

414. Professor Rogers came to Minnesota after ten years on the faculty of the University of Georgia School of Law. A graduate of Emory University Law School, he had attained an advanced degree at Harvard Law School. He was an expert in property law and estate planning law. *See* ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS, 1972, at 511 (1972).

415. For biographical information, see Stein, *The Lockhart Years*, *supra* note 19, at 811-13.

416. Professor Greene received his J.D. in 1952 from Rutgers, where he was Editor-in-Chief of the *Rutgers Law Review*. In 1960, he joined the Minnesota faculty as Professor and Librarian, becoming Director of the Law Library in 1963. He was recognized as the outstanding teacher of the year in 1972. Professor Greene has been Professor Emeritus since 1977. 1978-79 DIRECTORY, *supra* note 17, at 353. *See* Stein, *The Lockhart Years*, *supra* note 19, at 865 n.266.

417. By the time of his retirement, Professor Kinyon had become an institution

had spanned forty years. Their simultaneous retirements deprived the school of significant strength among the senior faculty. Five years later, another death, that of Professor J. Morris Clark, again shocked the school.⁴¹⁸

By 1975, however, with legislative success on the building proposal achieved, the law school returned to some measure of its former recruiting strength. In that year, Professors Laura J. Cooper,⁴¹⁹ Marcia R. Gelpe,⁴²⁰ Roberta Levy,⁴²¹ David Weissbrodt,⁴²² and Anthony T.

in the school. A 1933 graduate of the University of Minnesota Law School, Professor Kinyon spent one year in private practice before returning to the school as an instructor in 1934. He became an Assistant Professor in 1936 and remained a member of the faculty until 1974. As a student, Professor Kinyon took a class from the soon to be retiring Professor James Paige. Later he liked to quip that he and Paige together spanned the entire history of the school.

His early scholarship was directed toward preparation of the Restatements of Torts and Property with Restatements Reporter Dean Everett Fraser. Later his interest moved to the field of commercial law. Although he published many articles, his primary emphasis was on teaching. A perennial student favorite, he was approachable and concerned with the well-being of his students, both in and out of class. He was the author of the widely-distributed book, *HOW TO STUDY LAW AND WRITE LAW EXAMINATIONS*, used by decades of first-year law students.

Professor Kinyon served as faculty advisor to the *Law Review* (1949-59) and as Law Alumni Treasurer. He was also Minnesota faculty representative to the Big Ten Athletic Conference, continuing a tradition of athletic involvement by Minnesota faculty dating back to Professor James Paige. Professor Kinyon was also a great storyteller, as the author can attest from occupying an office next to him for over ten years.

On January 24, 1975, seven months after he retired, Professor Kinyon died. Volume 59 of the *Minnesota Law Review* is dedicated to his memory. A tribute to him appears in that volume at xiii-xv.

418. See note 410 *supra*.

419. Professor Cooper graduated in 1974 from the Indiana University School of Law at Bloomington where she was Executive Editor of the *Indiana Law Journal*. She clerked for a year with the Seventh Circuit Court of Appeals before joining the Minnesota faculty in 1975. 1978-79 *DIRECTORY*, *supra* note 17, at 237. Professor Cooper teaches courses in labor law, welfare law, and other subjects.

420. Professor Gelpe, a classmate of Professor Cooper at Indiana, also graduated in 1974. Before attending law school, she received an M.S. degree in Biology, and was an Instructor of Biology at Trinity College in Washington, D.C., for four years. After law school, she was an attorney with the Environmental Protection Agency for a year before coming to Minnesota. *Id.* at 330. Professor Gelpe teaches Environmental Regulation, Property, and Modern Real Estate. *Id.* at 330.

421. Professor Levy graduated from the University of Minnesota Law School in 1964. After six years' service as an assistant state public defender and four years in private practice, Professor Levy joined the Minnesota faculty in 1975. In 1978, she left the law school to assume an appointment as Hennepin County Municipal Court Judge. See Stein, *The Lockhart Years*, *supra* note 19, at 889 n.364.

422. Professor Weissbrodt graduated from the University of California School of Law at Berkeley, where he was Note & Comment Editor of the *California Law Review* in 1969. He clerked two years for Justice Tobriner, and then spent a year as a Fellow at the International Committee of Jurists in Geneva. Following two years in private

Kronman⁴²³ were added. And in 1977, a year reminiscent of some of the earlier, major hiring years, six new faculty members were added: Professors Barbara Ann Banoff,⁴²⁴ Richard S. Frase,⁴²⁵ Daniel J. Gifford,⁴²⁶ Thomas J. Moore,⁴²⁷ Stephen R. Munzer,⁴²⁸ and Steven S. Nemerson.⁴²⁹ As with the previous bumper-crop years of 1956⁴³⁰ and 1967,⁴³¹ it is hoped that the additions made in 1977 will provide the nucleus of faculty strength for years to come.

practice in Washington, D.C., Professor Weissbrodt came to Minnesota in 1975. 1978-79 *DIRECTORY*, *supra* note 17, at 756. He teaches Administrative Law, International Law, Insurance, and Torts.

423. Professor Kronman holds a Ph.D. in Philosophy and a J.D., both from Yale University, where he was an editor of the *Yale Law Journal*. He stayed at Minnesota for a year before joining the faculty at the University of Chicago. Most recently, he left Chicago to return to Yale Law School as a member of the faculty. *Id.* at 448.

424. Professor Banoff graduated from the University of Santa Clara School of Law, where she was Editor-in-Chief of the *Santa Clara Law Review* in 1973. After two years in private practice, she spent a year as Staff Counsel to the Senate Select Committee on Intelligence Activities, and a year as a Senior Fellow at Harvard Law School before coming to Minnesota in 1977. *Id.* at 147. She teaches in the areas of corporate law and securities regulation.

425. Professor Frase graduated in 1970 from the University of Chicago Law School, where he was Comment Editor of the *University of Chicago Law Review*. He clerked for two years with the Seventh Circuit Court of Appeals before entering private practice for two years. He then served as a Resident Associate at the University of Chicago Law School for three years before coming to Minnesota in 1977. *Id.* at 314. Professor Frase teaches criminal law and procedure and has responsibility for directing clinical programs in the area of criminal law.

426. Professor Gifford, a 1958 graduate of Harvard Law School, was on the editorial board of the *Harvard Law Review*. After four years in private practice, he began his teaching career at Vanderbilt. Then followed two years of fellowship work at the University of Warwick in England, and eleven years as a Professor at the State University of New York at Buffalo. Professor Gifford joined the Minnesota faculty in 1977, *id.* at 333, and teaches administrative and antitrust law.

427. Professor Moore graduated from the University of Minnesota Law School, where he was Note & Article Editor of the *Minnesota Law Review* in 1974. After practicing law for three years, he returned to his alma mater in 1977, *id.* at 534, where he taught property, estate planning, and employee benefit plans. He left the law school to return to private practice at the end of the 1978-79 academic year.

428. Professor Munzer received a B.Phil. degree from Oxford University before attending Yale Law School, where he served as Executive Editor of the *Yale Law Journal*. After graduating in 1972, Professor Munzer practiced law for a year, was Staff Attorney at Columbia for a year, and taught philosophy at Rutgers for three years. *Id.* at 543. At Minnesota, he teaches jurisprudence and property law.

429. Professor Nemerson received a Ph.D. in Philosophy from the City University of New York in 1973, and graduated from Columbia University School of Law, where he was Note & Comment Editor of the *Columbia Law Review* in 1976. After clerking for a year with federal District Judge Weinstein in New York, Professor Nemerson joined the Minnesota Law faculty, *id.* at 553, where he teaches Torts, Products Liability, Criminal Law, and Jurisprudence.

430. See Stein, *The Lockhart Years*, *supra* note 19, at 860.

431. See *id.* at 868 & n.282.

E. RELATIONS WITH THE BAR

For each of Minnesota's six deans, strengthening the relationship between the law school and the bar has been a major priority. Yet no other dean pursued this goal more energetically than Dean Auerbach. One manifestation of his commitment has been his active participation in the work of the Board of Governors of the Minnesota State Bar Association.⁴³²

Even more important has been the creation of a Board of Visitors designed to improve the communication between the bar and the law school. The first mention of a Board of Visitors was in the 1967 Decades Ahead report.⁴³³ Authored by Professor Auerbach, that report itself was produced in consultation with the Lawyers Advisory Committee on Law School Planning,⁴³⁴ a group whose role was similar to that envisioned for the Board of Visitors. Translating the Board of Visitors concept into reality was one of Dean Auerbach's highest priorities upon assuming the deanship in 1973. After a pilot program brought the Law School Alumni Association Board of Directors to the school for a one-day visit in the spring of 1973,⁴³⁵ the idea was approved and formalized by the alumni in the fall of 1974.⁴³⁶

Composed of the Board of Directors of the Law Alumni Association and an equal number of other lawyers, not necessarily graduates of the University of Minnesota Law School,⁴³⁷ the Board of Visitors has a dual function: to offer comment and criticism of the school's educational programs and plans, and to help the law school better explain these programs and plans to the bar and to the public.⁴³⁸ In the performance of these responsibilities, it was essential that the Board achieve and maintain a posture of objectivity.⁴³⁹ As the Board

432. Some previous deans have held the same membership on the Board of Governors, but none was a more active participant than Dean Auerbach.

433. See *The Decades Ahead*, *supra* note 59, at 78-79.

434. *Id.* at 3.

435. See *Alumni Board Visits Law School*, U. MINN. L. ALUMNI NEWS, Summer 1973, at 15.

436. See *Board of Visitors Approved for Law School*, U. MINN. L. ALUMNI NEWS, Winter 1974, at 12.

437. Half of the latter group are chosen by the President of the Law Alumni Association with the concurrence of the Association's Board of Directors, and half by the President of the Minnesota State Bar Association, with the concurrence of the Association's Board of Governors. *Id.*

438. It has no fund-raising duties. *Id.*

439. After the Board's second visit in 1975, some students expressed a concern that the Board was offering the dean and the faculty "rubber stamp" approval. Yet, at the same visit, Dean Auerbach congratulated the Board for "maturing into an entity with a life of its own." Baldonado, *Board of Visitors Disappoints This Student's Expectations*, *Quaere*, May 1975, at 18, col. 4. See *Non-visit*, *Quaere*, May 1975, at 17, col. 3 (letter to the editor).

of Visitors program has matured, the Board has indeed become an independent voice articulating the perspectives of the bar to the law school and the University.⁴⁴⁰

The bar also continued to contribute significantly to the financial support of the school throughout Dean Auerbach's tenure. Contributions to the Partners in Excellence program,⁴⁴¹ originated by Dean Lockhart, continued at an even level throughout Dean Auerbach's administration despite the dramatic competition for funds occasioned by the law school's Building Fund Drive.

Alumni participation in the law school's new building campaign began as early as 1971. The 1969 legislative appropriation of \$80,000 for the development of schematic drawings for a new law school building was insufficient to fully complete the task. Yet completion of these drawings was essential to the law school's 1971 legislative request for funds for working drawings and construction. Consequently, Dean Lockhart requested and received the additional \$25,000 needed to complete the architectural work from the Law Alumni Association.⁴⁴²

The alumni and bar Building Fund Drive originated from a suggestion by University Regent Elmer Andersen and University President Malcolm Moos. They advised the law school's proponents that the prospects for the school's legislative building campaign would be substantially enhanced if there were demonstrable financial support for the project from the profession.⁴⁴³ This support would communicate to the legislature, in a way that the law school was unable to do, the importance the state's legal community attached to the new law school building.

Acting on this suggestion, Dean Auerbach and the law school turned to the leadership of the Law Alumni Association. From this body, the law school received assurances that \$1 million could and would be privately raised if the law school could secure public funding for the remainder of the building proposal.⁴⁴⁴ Intended not as replacement for public funding but as a supplement to it, this pledge of private support enabled the law school to construct and furnish a building of a quality not normally found in public buildings. Significantly, this assurance was made at a time (the summer of 1972) when, on all other fronts, the law school's new building prospects

440. See Minutes of the Board of Visitors (on file with the Office of Admissions and Placement, University of Minnesota Law School, Minneapolis, Minnesota).

441. See Stein, *The Lockhart Years*, *supra* note 19, at 829-32.

442. Telephone Interview with William B. Lockhart, former Dean of the University of Minnesota Law School (May 1, 1979).

443. Interview with Carl A. Auerbach, Dean of the University of Minnesota Law School, in Minneapolis, Minnesota (May 8, 1979).

444. *Id.*

were most bleak. The support of the alumni at this critical time was crucial in sustaining the morale of the school.

In 1974, when the legislature appropriated \$400,000 in planning funds for the law school building, the time was at hand for the law school to raise the million dollars it had promised the legislature it would provide. As it had done in developing the Partners in Excellence program almost ten years earlier,⁴⁴⁵ the school turned to its staunch supporter, Minneapolis attorney Julius E. Davis.⁴⁴⁶ In addition to agreeing to co-chair the Building Fund Committee, Mr. Davis, with his law partners, agreed to offer a substantial "challenge" contribution.⁴⁴⁷ Serving as co-chairman with Mr. Davis was Minneapolis attorney Peter Dorsey. Significantly, Mr. Dorsey, a graduate of Harvard Law School, served by his active support to dramatize the fact that the future of the University of Minnesota Law School was of concern to all Minnesota lawyers. Mr. Davis, Mr. Dorsey, and the other members of the Building Fund Committee, Harold M. Fredrikson and Richard L. Post,⁴⁴⁸ embarked on a vigorous campaign of law firm solicitation. Later, the law school followed up with an all-alumni effort. The results were outstanding by any standard. Within months, the million dollar figure was achieved and exceeded,⁴⁴⁹ and, with pledges still arriving, the Fund reached \$1.48 million in 1979.⁴⁵⁰

In recognition of this vital support, areas of the new building have been memorialized to various donors. In addition, many contributors have been recognized by the inscription of their names on bricks in a donors' wall at the entrance to the school. The continuing support of the alumni and the bar was one of the consistently gratifying aspects of the law school's long drive for new facilities. It is, moreover, a justification for optimism concerning the school's future.

F. CONTROVERSY

During the seven-year administration of Dean Auerbach, the law school fought a monumental struggle for new facilities, engaged in a far-reaching curriculum reappraisal, and sought to further strengthen its relationship with the practicing bar. In these endeavors, described

445. See Stein, *The Lockhart Years*, *supra* note 19, at 829-32.

446. See *id.* at 830 n.96.

447. The Robins, Davis & Lyons law firm donated \$100,000, and its senior partners contributed an additional \$50,000 each. Interview with Associate Dean Robert F. Grabb, University of Minnesota Law School, in Minneapolis, Minnesota (Mar. 27, 1979) [hereinafter cited as Grabb Interview].

448. See *The New Law School Building Honor Roll*, in EIGHTH ANNUAL REPORT TO THE PARTNERS IN EXCELLENCE, 1975, at 15 (University of Minnesota Law Alumni Association 1976).

449. *Id.* at 3.

450. Grabb Interview, *supra* note 447.

in this narrative, Dean Auerbach's administration may be characterized as an unusually active one. But Dean Auerbach's administration might also be described as one in which controversy frequently arose. As noted earlier, Dean Auerbach's writings give an indication of a predilection for adversarial discourse—for strongly stating and defending his positions.⁴⁵¹ Perhaps as a result of this trait, perhaps as a result of the times, or more probably as a result of both, controversy was never far away during Auerbach's administration. The law school building drive was but one consistent source of controversy. Two other sources, the clinical education program and the affirmative action program, provided additional controversy within the school.

1. *The Clinical Education/LAMP Controversy*

One of the primary sources of controversy within the law school in the 1970s was the continuing attempt by the faculty to define the role of clinical education in the law school curriculum. The early and rapid growth of clinical education at Minnesota was more a result of student initiative and private foundation support than of faculty action.⁴⁵² As a consequence, Minnesota's clinical programs were rather extensive before the faculty had successfully delineated the precise role of these programs in the law school. As the clinical programs matured, the financial support of private foundations, intended only as seed grants to get the programs under way, began to diminish. Thus, during Dean Auerbach's tenure, the faculty was forced to address the development of its policy position on clinical education. In this, the Minnesota experience was part of a national debate on a highly controversial issue.⁴⁵³

Perhaps the most important segment of the debate over clinical education in the Auerbach years concerned the position of clinical instructors on the law school faculty. Due to the experimental origins of most clinical programs, the teachers selected to direct them were usually given nonregular appointments; they were not placed on a tenure track as are most new traditional teachers. This policy allowed the faculty to experiment with the clinical programs without shifting "hard money" salary funds from the traditional faculty to the clinical faculty. But, as "soft" (nonrecurring) funding began to run out, find-

451. See text accompanying notes 41-46 *supra*.

452. See Stein, *The Lockhart Years*, *supra* note 19, at 858.

453. For examples of the continuing discussion about clinical education, see Gorman, *Symposium on Legal Education: Clinical Legal Education: A Prospectus*, 44 S. CALIF. L. REV. 537, 571 (1971); Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974); Kramer, Wolf & Hill, *Beyond Law School Walls: A Look at Four Clinical Education Programs*, 12 TRIAL 23 (Dec. 1976).

ing appropriate sources of funding for clinical teachers became a serious problem.

The preferred solution, of course, would have been to allocate new faculty positions to the clinical programs as the faculty size increased in accordance with the Decades Ahead proposal.⁴⁵⁴ But, the law school's faculty expansion requests were not successfully realized.⁴⁵⁵ This left the faculty in a dilemma. Since clinical education requires close supervision and a very low ratio of students to teachers, appointing clinical professors to regular faculty positions would simply reduce the number of faculty members available to teach the traditional classroom curriculum, exacerbating the problem of the law school's already high student-faculty ratio. Consequently, expansion of the clinical faculty was not quickly accomplished.

In addition to the problem of securing the resources with which to expand the faculty, there was a second issue in the debate surrounding the place of clinical instructors within the law faculty. Were clinical instructors to be a new and different breed of faculty members—working solely in the clinical area of the curriculum—or were they to be professors who, along with traditional classroom and scholarship responsibilities, also had clinical duties? The choice was of obvious significance in determining the qualifications necessary for the positions. But this choice was not easily made.

The faculty's discomfort in determining the appropriate role of clinical professors was nowhere more clearly reflected than in the consideration of candidates for the school's second clinical position. The school's first clinical professor, Robert Oliphant, had been appointed to the regular faculty in 1972 after serving in a non-regular appointment for three years.⁴⁵⁶ Professor Oliphant, perhaps more as a result of chance than of faculty design, had assumed regular classroom as well as clinical duties. In 1975, when the appointment of a second clinical professor was considered, there were, besides Professor Oliphant, three instructors and two associate professors, all on non-regular appointments, working in the clinical program.⁴⁵⁷ These five

454. See C. Auerbach, *The University of Minnesota Law School in the Decade Ahead: Missions, Goals and Costs*, at 35 (Jan. 28, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

455. See notes 539-543 *infra* and accompanying text.

456. See Stein, *The Lockhart Years*, *supra* note 19, at 857.

457. They were Instructors Philip Marron and Susan Short in the Civil Legal Aid Clinic, William Gatton in the Juvenile Law Clinical Seminar, and Associate Professors Melvin Goldberg and James Cullen in LAMP. While the salaries of Professors Goldberg and Cullen were specially funded by the legislature, the instructors' salaries were paid, at least in part, out of unassigned instruction funds (unfilled regular faculty positions). See *Law School's Budget Proposals for 1975-77*, at 23 (Feb. 19, 1974) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

persons had exclusively clinical responsibilities.

Significantly, the faculty appointments committee narrowed the field of prospective candidates to three, without answering the question of whether the new appointee would be exclusively a clinician or would also have traditional classroom responsibilities.⁴⁵⁸ The answer would obviously influence selection of the individual to be appointed, since some finalists had better academic credentials and some had better clinical experience. Nevertheless, and despite considerable faculty discussion, no formal decision was made on the job description.⁴⁵⁹ Instead, the faculty moved directly to select a candidate, and Roberta Levy was appointed as the school's second clinical professor. Her appointment and her subsequent assumption of classroom responsibilities indicated that the faculty had implicitly adopted a traditional model for its clinical faculty.⁴⁶⁰ Yet questions concerning the role of the clinical professor and his or her status on the faculty have continued to be raised.⁴⁶¹

Tensions over the place of the clinical professor within the law school faculty were but one aspect of the continuing clinical education controversy. Far more vitriolic was the controversy over the Legal Aid to Minnesota Prisoners (LAMP) program. The LAMP program began in the spring of 1972 with a two-year grant from the Federal Law Enforcement Assistance Administration and matching funds from the University of Minnesota.⁴⁶² Its goals were to determine the needs of prison inmates for civil legal assistance, the feasibility of satisfying these needs, and the educational value of meeting these needs through a law school clinical program.⁴⁶³ Professors Melvin Goldberg and James Cullen were appointed as non-regular members of the faculty to administer the program.

458. See Memorandum from Appointments Committee to Dean Carl A. Auerbach (Feb. 12, 1975), *appended to* the Minutes of the University of Minnesota Law School Faculty (Feb. 18, 1975).

459. Discussion of the matter was carried over, still unresolved, to the faculty's next meeting. See Minutes of the University of Minnesota Law School Faculty (Feb. 18, 1975). When next taken up, the faculty moved directly into voting on the candidates. See *id.* (Mar. 18, 1975).

460. Although no further expansion in the number of clinical faculty has been made, another appointment, that of Professor Richard S. Frase to the position left vacant by Professor Oliphant's resignation in 1976, has continued the pattern set by the Levy appointment. Professor Roberta Levy resigned her position in 1978 to become a Municipal Court Judge in Hennepin County. This position has not yet been refilled on a permanent basis.

461. See Oliphant, *When Will Clinicians be Allowed to Join the Club?*, LEARNING & L., Summer 1976, at 34.

462. See *LAMP Limp Along*, Quaere, Dec. 1976, at 2, col. 3.

463. See Auerbach, *Clinical Education and the Law School*, Quaere, May 1975, at 11, col. 2.

Two years later, as the grant for the program was expiring, LAMP received favorable evaluations from a faculty committee and members of the bench and bar.⁴⁶⁴ Consequently, funding through the office of the State Public Defender was secured to continue the program through June 1975. The State Public Defender, C. Paul Jones, contracted with the law school for the operation of the program.⁴⁶⁵ As the law school was still operating the program, the channeling of funds through the Defender's office did not represent a practical shift in control over the program. In preparing for the 1975 legislative session, the LAMP budget was again made a part of the request of the Office of the State Public Defender.⁴⁶⁶

The controversy surrounding the program began to surface that spring, when Dean Auerbach announced that, if the legislature granted the Defender's LAMP request, the law school would continue to operate the program only until July 1976, at which time Dean Auerbach proposed to shift authority for the program out of the law school and into another state agency, most logically the Public Defender's office.⁴⁶⁷ The Dean believed that the law school should not undertake, except on an experimental basis, "to become the exclusive provider of [legal] services to any segment of the community [including prisoners] indefinitely."⁴⁶⁸ He informed Professors Cullen and Goldberg that their non-regular faculty appointments would be terminated in July 1976.⁴⁶⁹ Presumably, whichever agency assumed direction of the LAMP program at that time would be free to employ whomever they chose, including Professors Cullen and Goldberg, to administer the program.

In taking this action, Dean Auerbach ran afoul of some student and faculty opinion on the issue. For many of the students, among whom enthusiasm for clinical work was very high, the Dean's move seemed to represent an attempt to end the clinical educational aspects of LAMP and an attempt to undermine clinical programs generally. Aware of the Dean's belief that clinical education was not then characterized by a sufficient degree of intellectual challenge,⁴⁷⁰ they were skeptical of any faculty or administration action affecting the clinical component of their education. Both LAMP and its directors, Professors Cullen and Goldberg, had developed a significant student following. Many students were distressed that, in filling its second

464. See *id.*

465. *LAMP Limps Along*, *supra* note 462, at 2, col. 4.

466. See Auerbach, *Clinical Education and the Law School*, *supra* note 463.

467. *Id.*

468. *Id.* at 10, col. 3.

469. See *Confusion Persists on LAMP's Future*, *Quaere*, May 1975, at 14, col. 1.

470. See text accompanying note 387 *supra*.

clinical professorship, the faculty had not appointed Professor Goldberg.⁴⁷¹ They were even more distressed to learn that the Dean planned to terminate all employment relations with the LAMP directors in 1976. In this, they feared, there was an attempt to simultaneously terminate the employment of two well-liked professors, eliminate one of the popular clinical offerings in the school, and seriously weaken the school's overall clinical program.

Among the faculty, as well, there were fears that the Dean's actions were contrary to, or at least in advance of, the faculty's position on the LAMP issue. Earlier in the same day that Dean Auerbach informed Professors Cullen and Goldberg that their contracts would not be renewed, the faculty had adopted a resolution continuing the relationship between the law school and LAMP until July 1976 "without prejudice to the possibility of future change."⁴⁷² While this wording created ambiguity regarding LAMP's status after 1976, one professor later observed, "I don't think it really occurred to any member of the faculty that [by this resolution] the program was being given a terminal year."⁴⁷³

Yet, the gust that was to intensify this controversy within the school was yet to come. Both the faculty's and the Dean's actions regarding LAMP had been predicated on the belief that LAMP, at least as a service organization, would again be funded by the legislature. But in April, the House Appropriations Committee voted to reject the LAMP funding proposal for the coming biennium.⁴⁷⁴ Significantly, the vote was prefaced by the remarks of Representative Neil Haugerud who, having had a conversation with Dean Auerbach, reportedly used the "actions of the law school and the Dean to create the clear impression [that] the law school did not support LAMP as both a service and an educational program."⁴⁷⁵ This vote and the comments made concerning the Dean's statements were all that were needed to fan the smoldering displeasure with the Dean's action into fire.

At a regularly scheduled faculty meeting, held on the same afternoon as the Appropriations Committee vote, the LAMP issue was thoroughly and heatedly discussed. The Dean, informed of Representative Haugerud's remarks, termed them "an erroneous interpre-

471. See Piepkoun, *Goldberg, Yes, Quære*, May 1975, at 17, col. 3 (letter to the editor).

472. See Memorandum from the Educational Policy Committee (Apr. 6, 1975), appended to Minutes of the University of Minnesota Law School Faculty (Apr. 15, 1975).

473. *Confusion Persists on LAMP's Future*, *supra* note 469, at col. 3 (quoting Professor C. Robert Morris).

474. See *id.* at col. 1.

475. *Id.* at col. 2 (quoting Professor Donald G. Marshall).

tation" of his position, which he then clarified.⁴⁷⁶ The faculty, too, clarified its position by adopting a second resolution on the issue:

[T]he Faculty of the University of Minnesota Law School reiterates its position that the L.A.M.P. (Legal Assistance to Minnesota Prisoners) program has distinctive educational value and supports the continued funding of L.A.M.P. and the continued affiliation of the Law School with the L.A.M.P. program.

Although the faculty will re-examine the administrative arrangements between the Law School and the State Public Defender's Office during the 1975-76 academic year, it finds that both the service and the educational benefits of the L.A.M.P. program to be [*sic*] of high merit and would very much regret its discontinuance.⁴⁷⁷

While still ambiguous regarding the operation of LAMP after 1976, the resolution did serve to assure the legislature that the law school faculty thought the program should be continued under the direction of some state agency for the biennium. This resolution was sent to the Senate Finance Committee, where it was hoped that LAMP funding would be supported, setting the stage for final resolution of the issue in a conference committee. But as the legislative session wore on, LAMP's political fortunes seemed to worsen.

It was at this point, with both the future of LAMP and the new law building still uncertain, that the May 1975 issue of *Quaere*, the law school's student newspaper, covered the controversy. In addition to an article describing the chain of events comprising LAMP's recent history, it carried a long statement by Dean Auerbach of his position on clinical education generally and LAMP in particular,⁴⁷⁸ and an editorial and two "Letters to the Editor" highly critical of Dean Auerbach's administration. The opening lines of the editorial perhaps capture the mood:

Under Dean Auerbach the law school has committed one faux pas after another, apparently the result of poor communication among faculty, students and administration. A communication failure is the most charitable view of the series of self-defeating actions which have eroded the dean's credibility, transformed the school into a rumor mill and jeopardized the LAMP program.⁴⁷⁹

The "Letters to the Editor" hit even harder. One asked, "Is Dean Auerbach a liar, self-deceived, or just subject to unfair abuse by

476. *Id.* at col. 1.

477. *Id.* at col. 2.

478. Auerbach, *Clinical Education and the Law School*, *supra* note 463, at 9, col. 1.

479. *Editorial*, *Quaere*, May 1975, at 16, col. 1.

worldly journalists and politicians?,"⁴⁸⁰ and the other asked "that Dean Auerbach resign."⁴⁸¹

By the end of the month, however, the mood within the law school had improved significantly as both the new law building and the LAMP program were funded by the legislature. The LAMP impasse was broken when several legislators moved to save the program by switching its appropriation from the Public Defender's budget to that of the law school, bringing it under the jurisdiction of a different House committee where support was more easily garnered.⁴⁸² The incidental effect of this action was to place responsibility for the LAMP program back in the law school, exactly where Dean Auerbach did not want it to be. But the maneuver did save the LAMP program, at least for the time being, which was consistent with the law school's expressed intent.

Two years later, when the next legislative request was being prepared, LAMP was again shifted from the law school's budget to that of the Public Defender. It survived the 1977 legislative session in that position. Currently, LAMP has indeed been "spun-off" to the Defender's office, but it retains a clinical education component supervised by the law school, as was contemplated by Dean Auerbach.⁴⁸³

While the LAMP issue has now been largely resolved, the intensity with which it was debated in the spring of 1975 reflects the tensions attending clinical education throughout the 1970s. Despite these disputes, the clinical program at the University of Minnesota Law School grew during the administration of Dean Auerbach to be one of the largest, best-supported, and, by many accounts, one of the finest programs in the country.⁴⁸⁴ Yet, according to the Dean and the faculty, "this did not speak to the excellence of our program, but only to the immaturity of the clinical programs in most law schools in the United States."⁴⁸⁵ Thus, attempts to define the objectives of the clinical program at the University of Minnesota Law School continue to

480. *Incredible Dean*, Quaere, May 1975, at 16, col. 3.

481. *Auerbach, No*, Quaere, May 1975, at 17, col. 1.

482. *LAMP Limps Along*, note 462 *supra*.

483. See Auerbach, *A Second Opinion on Clinical Education*, Quaere, Oct. 1977, at 7, col. 1.

484. When Dean Auerbach first assumed his position, the law school was spending \$63,875 on clinical education (exclusive of LAMP), of which \$41,942 came from state-appropriated funds and \$21,933 from other sources—principally the Council on Legal Education for Professional Responsibility. In 1977, the law school spent \$177,052 on clinical education exclusive of LAMP, of which \$173,488 came from state-appropriated funds and \$3,564 from other funds. *Id.* at col. 3-4.

485. See Memorandum from Dean Carl A. Auerbach to Vice President Harold W. Chase re: Law School's Budget Proposals for 1975-77, at 20 (Feb. 19, 1977) (on file at the *Minnesota Law Review*).

the present time.⁴⁸⁶ As the evolution of law school curricula continues in the decades ahead, it is likely that clinical work will be a prominent part of the educational program. But the full integration of clinical work into the traditional curriculum has not yet been achieved.

2. *The Affirmative Action Program in the 1970s*

Another source of controversy during Dean Auerbach's administration was the school's affirmative action program. As with the clinical education issues, the origins of the controversy date back to the administration of Dean Lockhart.⁴⁸⁷ The law school adopted a policy in 1968 of admitting not more than "15 applicants as special risk admissions from educationally and culturally disadvantaged students or members of minority groups who do not meet the usual admissions requirements but who do have a predicted first year average of 8.0 (minimal passing grade or better)."⁴⁸⁸ Under similar criteria, the faculty committed half of the school's scholarship funds for the use of these students.⁴⁸⁹ These policies, and a minority student tutorial program, constituted the major elements of the law school's affirmative action program for a decade.

Throughout that decade, however, affirmative action policies such as these were the subject of continuing debate both at Minnesota and across the country. The issue was and remains emotionally highly charged. In recognition of the complex legal and moral issues involved, the University of Minnesota Law School faculty, upon adoption of its special admission and scholarship programs, submitted them to the Minnesota Attorney General for an opinion as to their legality. In 1972, the Attorney General delivered an opinion upholding their constitutionality.⁴⁹⁰

At about the same time, however, litigation challenging a similar affirmative action policy adopted at the University of Washington Law School was making its way to the United States Supreme Court. In that case, *DeFunis v. Odegaard*,⁴⁹¹ an unsuccessful white male applicant for admission to the University of Washington Law School brought suit requesting a mandatory injunction directing his admission. His claim was based on the contention that the denial of his

486. See Kramer, Report on Clinical Education at the University of Minnesota Law School (Feb. 1979).

487. See Stein, *The Lockhart Years*, *supra* note 19, at 870-79.

488. See Minutes of the University of Minnesota Law School Faculty (Apr. 10, 1968).

489. Stein, *The Lockhart Years*, *supra* note 19, at 875.

490. MINN. OP. ATT'Y GEN. 618-a-15 (Mar. 28, 1972).

491. 416 U.S. 312 (1974) (per curiam).

admission was unconstitutional, in that the law school had "invidiously discriminated against him on account of his race" through the use of a special admissions program.⁴⁹² A Washington trial court found for DeFunis and granted the requested relief. By the time the United States Supreme Court heard arguments, DeFunis was a third-year student close to graduation. The majority of the Supreme Court, noting that DeFunis would "complete his legal studies . . . regardless of any decision this court might reach on the merits of this litigation," held the case moot.⁴⁹³ Thus, the important constitutional questions raised by the case remained unresolved. In fact, in light of Justice Douglas' probing dissent,⁴⁹⁴ the case probably served to intensify the debate.

Reflective of the emotional climate surrounding the issue was the reaction to a speech on "Affirmative Action and Justice" delivered by Dean Auerbach in the fall of 1974.⁴⁹⁵ In his speech, the Dean analyzed the various justifications advanced for affirmative action programs, giving his reasons for accepting or rejecting each. His conclusion was that such programs were constitutionally and ethically justified. The *Minnesota Daily*, however, reported the speech the next day under the headline "Law Dean Denounces Minority Favoritism,"⁴⁹⁶ emphasizing Dean Auerbach's rejection of several of the justifications commonly advanced for the programs. The article left the impression that Dean Auerbach was, at the least, retreating from the law school's affirmative action policies.

The article and the speech engendered considerable discussion both within the law school and throughout the University, prompting Dean Auerbach to clarify his views in a letter to the *Daily* Editor. Terming the *Daily* article "outrageously inaccurate"—"provok[ing] serious, regretable and unnecessary tension within the law school,"⁴⁹⁷ he documented his support of the law school affirmative action program and stated the reasons for his position.⁴⁹⁸ He also repeated his lecture before an assembly of law students the following week and answered student questions concerning his views.⁴⁹⁹

492. *Id.* at 314.

493. *Id.* at 319.

494. *Id.* at 320.

495. See *Exercise in Defending the Status Quo*, Minn. Daily, Nov. 25, 1974, at 7, col. 3; *Auerbach Reiterates Questioned Lecture*, Minn. Daily, Nov. 19, 1974, at 1, col. 1; *Dean Clarifies Stand*, Minn. Daily, Nov. 18, 1974, at 9; *Law Dean Denounces Minority Favoritism*, Minn. Daily, Nov. 15, 1974, at 4, col. 1.

496. Minn. Daily, Nov. 15, 1974, at 4, col. 1.

497. See *Dean Clarifies Stand*, *supra* note 495.

498. *Id.*

499. See *Auerbach Reiterates Questioned Lecture*, *supra* note 495.

In addition to his support of the University of Minnesota Law School plan, he also

Slowly, the misunderstandings cleared away. Yet the speed and intensity of the reaction illustrates how highly charged the issue was. A subsequent *Quaere* editorial placed the incident in perspective:

The squall of protest which attended Dean Auerbach's speech last quarter which seemed (wrongly as it turned out) to question the propriety of the law school's affirmative action admission policy demonstrates the sensitive position of professional schools in attempting to increase minority enrollment. Affirmative action has receded as an issue and is being applied to the current crop of applicants for seats in next years' class, but in a sense the law school and other professional schools are living on borrowed time. The tangled moral and legal questions raised and unanswered by the DeFunis case will arise again and demand final resolution.⁵⁰⁰

Indeed, these issues were again on their way to the Supreme Court in *Regents of the University of California v. Bakke*.⁵⁰¹ Bakke, a white male, was denied admission to the medical school of the University of California at Davis in both 1973 and 1974.⁵⁰² He subsequently brought suit seeking compulsory admission on the ground that the Davis special admissions program, which could be used to fill up to sixteen of the one hundred spaces available in the first-year class,⁵⁰³ operated to exclude him from the school on the basis of his race.

As the special admissions program at the Davis Medical School was very similar to that used by the University of Minnesota Law School, the case was closely watched by members of the law school community. The case was argued in the United States Supreme Court during October 1977.⁵⁰⁴ Then came eight long months of Court deliberation. It was during this period that the law school's new building dedication, attended by Chief Justice Warren Burger, was held.⁵⁰⁵ On that day, about 300 people rallied at a "counter-dedication" to urge Chief Justice Burger and the Supreme Court to uphold the constitutionality of the Davis admissions program.⁵⁰⁶ Feelings were still running very high.

noted that he had joined a group of law school deans in the submitting of an amici curiae brief in the *DeFunis* case supporting the position of the University of Washington. *Id.* See also Brief of a Group of Law School Deans as Amici Curiae, *DeFunis v. Odegaard*, 416 U.S. 312 (1974).

500. *Editorial, Quaere*, Jan. 1975, at 6, col. 1.

501. 438 U.S. 265 (1978).

502. *Id.* at 276-77.

503. *Id.* at 277-78.

504. *Id.* at 265.

505. See text accompanying notes 380-382 *supra*.

506. See *Bakke Reversal Urged at "Counter Dedication," Minn. Daily*, Apr. 5, 1978, at 1, col. 1.

On June 28, 1978, the Supreme Court delivered its complicated decision in the case.⁵⁰⁷ The five-to-four majority opinion, written by Justice Powell, was concurred in by four Justices as to one portion of the opinion and by four different Justices as to another portion of the opinion. Although the opinion declared the Davis Medical School special admissions program unconstitutional in that it "involves the use of an explicit racial classification never before countenanced by this court,"⁵⁰⁸ it also acknowledged that race is an appropriate criterion of admissions when used in conjunction with other factors to produce diversity in the student body, so long as race is not used as an exclusive admissions criterion; quotas for minority students are prohibited.

As a result of the *Bakke* decision, the University of Minnesota Law School special admissions program was clearly in jeopardy. Like the Davis policy, the Minnesota program reserved a specific number of places in the first-year class for admittees from a pool of minority group applicants. At Minnesota, as at Davis, race was a threshold criterion for consideration in the special admissions program. *Bakke* required the law school to develop a more specific and legally valid means of achieving its continuing objectives of diversification of the student body and greater minority representation in the law school and the legal profession. Nine months later, the faculty adopted a new admissions policy in support of affirmative action:

Past experience indicates that admissions based largely on traditional predictors of success (grade point averages and LSAT scores) will produce a considerable measure of the desired diversity in the student body. The Committee will, however, consider other factors which will lead to a greater diversity in the student body. These factors will include work experience and achievement, career goals, extra-curricular activities, racial/ethnic background, ability in languages other than English, positions of leadership, community or public service, unusual life experiences, physical handicaps, economic disadvantage and any other characteristics which may indicate that the applicant can contribute to the desired diversification.⁵⁰⁹

Most certainly, the affirmative action controversy is not over,⁵¹⁰ but

507. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

508. *Id.* at 319.

509. Admissions Policy, *appended to Minutes of the University of Minnesota Law School Faculty* (Feb. 27, 1979).

510. For example, in 1979, the remarks of a law professor to an undergraduate class on the justifications for affirmative action programs prompted a controversy strongly reminiscent of that which flared over Dean Auerbach's 1974 affirmative action speech. Several law students who attended the class interpreted the professor's remarks as inflammatory and racially degrading. A lively debate on the issues of affirma-

with the new policy it is hoped that the law school can continue to make progress toward alleviating the problems incident to the malapportionment of legal education in our society.

G. ENROLLMENT DEVELOPMENTS

One reason why the affirmative action issue received so much attention was the ever-intensifying competition for admission to Minnesota and other high-quality law schools. Ever since the early 1960s, the number of law school applicants has been far in excess of the number of available openings.⁵¹¹ Although in the late 1970s the number of applicants has leveled off, their quality, by traditional standards, has continued to improve gradually. The most recent entering class (the class of 1981, entering the law school in the fall of 1978), for example, had a mean grade point average of 3.54 on a 4.0 scale, and a mean LSAT score of 663,⁵¹² indicating a performance among the top ten percent of all those who sat for the test in the previous three years.⁵¹³ With competition of this intensity, the law school has

tive action and academic freedom followed. This, like the earlier controversies, indicated the depth of emotion pervading the affirmative action issue. See *Law School and Affirmative Action: The Readers Deliberate*, Minn. Daily, Apr. 2, 1979, at 7, col. 1; Auerbach, *Law School Admissions*, Minn. Daily, Mar. 9, 1979, at 6, col. 1; Johnson, *The Law School Trials: Rehashing the Evidence*, Minn. Daily, Mar. 9, 1979, at 7, col. 1; von Alten, *U. Profs Remarks Spark Students Forum*, Minn. Daily, Mar. 8, 1979, at 1, col. 1; McGee, *Law School and Affirmative Action*, Minn. Daily, Mar. 2, 1979, at 7, col. 1. See generally *Skirmish at Minnesota over Alleged Racial Slur*, The National Lawyer, Mar. 26, 1979, at 12, col. 1.

The affirmative action program in the law school can claim some significant achievements. In 1979, Dean Auerbach reported that in the first six years of his administration (1972-1978), 107 minority students had been admitted to the law school under the special admissions policy. Of this number, 42 had graduated and 48 were currently enrolled. Only 17 had withdrawn, failed to pass, or transferred to another school. During the same six year period, the law school had invested the following expenditures in the affirmative action program:

Scholarships	\$443,992
Tutoring	40,000
Summer internship program	55,311
Recruitment	6,275
	<hr/> \$545,578

Memorandum: Affirmative Action Law School Program 1972-78 (on file at the Deans' Office, University of Minnesota Law School, Minneapolis, Minnesota). By comparison, there were only five minority graduates during the entire decade of the 1960s when there was no affirmative action program. See *The Opinions of the Attorney General*, MINN. LEGAL REG. 22 (Apr. 5, 1972). See generally MINN. OP. ATT'Y GEN. 698-a-15 (Mar. 28, 1972).

511. See Stein, *The Lockhart Years*, *supra* note 19, at 894-95.

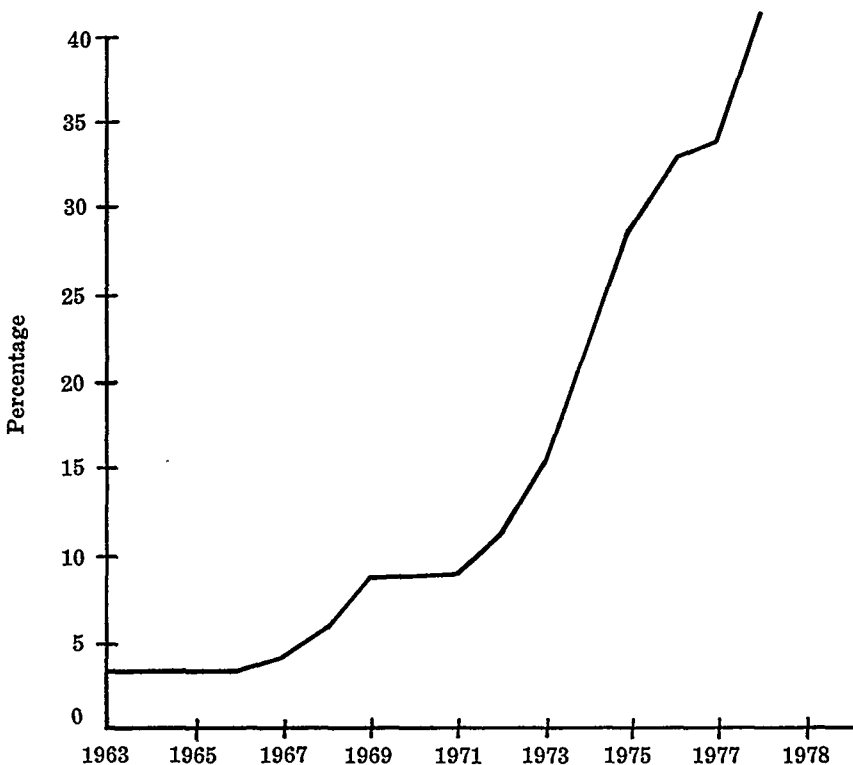
512. See Mean GPA/LSAT data for the classes of 1974 through 1981 (on file at the Office of Admissions and Placement, University of Minnesota Law School, Minneapolis, Minnesota).

513. See Memorandum from Dean Carl A. Auerbach to Vice President James Brinkerhoff, *supra* note 217.

continued to turn away hundreds of fully qualified applicants annually due to lack of space and resources.

While the causes of this intense and sustained demand for legal education are many and varied, certainly a contributing factor has been the large-scale entry of women into law school. At no time before 1970 had as many as ten women graduated from the University of Minnesota Law School in any one year.⁵¹⁴ In 1978, however, the school graduated 67 women in a class of 221.⁵¹⁵ While many of the primary institutional adjustments accompanying this demographic shift were made during the Lockhart years, the major increase in the number of women studying law at the University of Minnesota Law School took place during the administration of Dean Auerbach. The following graph depicts the extent of this increase.⁵¹⁶

*Percentage of Women in Law School Enrollment
1963-1978*



514. See *More Women*, U. MINN. L. ALUMNI NEWS, Winter 1973, at 7.

515. Enrollment data from the Office of Admissions and Placement, University of Minnesota Law School, Minneapolis, Minnesota.

516. *Id.*

H. THE STRUGGLE FOR MORE RESOURCES

The new law school facility was carefully and specifically designed, not as an end in itself, but as a means to accommodate a new and expanded law school program. To Dean Auerbach, obtaining the building without obtaining the program for which it was designed meant abandoning a project well begun and not completed. This he would not do. Thus, long before the building had been dedicated, he began the trying task of securing the resources necessary to fully utilize the new facility. It was in this, the struggle for more resources, that Dean Auerbach met with the many frustrations that were to prompt his resignation in 1979.

Dean Auerbach's campaign for additional resources for the law school identified several areas of need. Maintenance and expansion of the clinical programs in the face of evaporating private foundation support, encouraging faculty research through research leaves and added support staff, and assuring the continued publication of the *Minnesota Law Review* were all part of the Dean's request, supplementing his emphasis on increased support for the two major pillars of the law school's educational program—its library and its faculty.⁵¹⁷

In his efforts to increase the budget of the clinical program, Dean Auerbach met with some success. State-appropriated funding of clinical education grew from \$42,000 at the beginning of Dean Auerbach's administration to \$177,000 in 1977, while private funding dwindled from \$22,000 to \$3,500 in the same period.⁵¹⁸ There was also some progress in providing additional resources with which to encourage research. Most notably, paid part-time student research assistants were made available to the faculty.⁵¹⁹ Yet, University-supported research leaves for the faculty remained only a hope.

The future publication of the *Minnesota Law Review* was assured when the long struggle for a University subsidy was successfully concluded. The *Law Review*, established in 1917, had been self-sufficient for almost four decades. Profiting from an agreement with the Minnesota State Bar Association by which membership dues in the Association included the subscription fee for the *Law Review*, its

517. See Law School's Budget Request for 1977-79 (Jan. 29, 1976) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota); Law School's Budget Proposals for 1975-77, *supra* note 457.

518. See note 484 *supra*. However, the increased budget for the clinical program was achieved by diverting funds from the law school's instructional budget rather than by securing an increased state appropriation for clinical education.

519. See Law School's Budget Request for 1977-79, *supra* note 517, at 23. The research assistant funds, like the increased clinical program dollars, were obtained by allocating a portion of the law school's instructional budget for this purpose, rather than by securing an additional appropriation targeted for this use.

financial security was assured until the agreement was terminated in 1948. By the mid-1950s, the surplus accumulated over the course of the agreement with the Bar Association was nearly consumed.⁵²⁰ The 1955 Self-Survey report warned that a University subsidy would soon be needed,⁵²¹ but a budgeted, recurring subsidy was still some twenty years away.

In the interim, the *Law Review* maintained its solvency by a variety of stopgap measures. An increase in subscription income was generated through an agreement with the Law School Student Bookstore, operated by the Law School Council, by which the bookstore purchased subscriptions for all University of Minnesota law students. Since not all of the students actually picked up their copies of the *Review*, however, the bookstore terminated this agreement.⁵²² Instead, the *Law Review*, like other student organizations, annually received a share of the bookstore's profits from the Law School Council.⁵²³ Throughout the early and mid-1960s, this was supplemented by annual grants from the Regents' Reserve Fund,⁵²⁴ a fund of appropriated but unused University money available at the discretion of the University's President.

By the late 1960s, however, the Regents' Reserve funds had evaporated. The Law School Council, too, was unable to expand its subsidy of the *Law Review*. Fortunately, the *Review* still had a significant asset of its own, its inventory of back issues. Administering this collection, stored in the subbasement of Fraser Hall, was a considerable burden on the *Review*. In 1968, when a sale of the inventory copies of the first fifty volumes was negotiated for \$20,000, the *Review's* financial outlook markedly improved.

By the mid-1970s, however, the surplus generated by this sale was consumed. Finally, in 1977, the *Review* became a part of the law school's regular budget.⁵²⁵ With this, its future publication became somewhat more assured.

Dean Auerbach's concern over resources for clinical education, faculty research, and the *Minnesota Law Review* was minor in comparison to his concern for the law library and expansion of the law faculty. In the first and more successful campaign, Dean Auerbach

520. See Stein, *The Pirsig Years*, *supra* note 104, at 327-28; Stein, *The Vance Years*, *supra* note 61, at 880-82.

521. See Law School Self-Survey Report, at 30 (1955) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

522. See The Law Review Financial Journal (1949-1967) (on file at Dean's Office, University of Minnesota Law School, Minneapolis, Minnesota).

523. See Law School's Budget Proposals for 1975-79, *supra* note 457, at 28.

524. See The Law Review Financial Journal (1949-1967), *supra* note 522.

525. Interview with Robert Grabb, Associate Dean, University of Minnesota Law School, in Minneapolis, Minnesota (May 1, 1979).

sought to correct the budgetary lethargy threatening to seriously damage the law school's renowned law library. Its collection, which had been built on the phenomenal accomplishments of its first and great librarian, Arthur C. Pulling (1912-1942),⁵²⁶ was the fifth largest and probably fifth best law library in the country during the middle 1960s.⁵²⁷ But in the late 1960s and early 1970s, the law library fell upon hard times. Not only did it drop to the sixth⁵²⁸ and then seventh largest law school library,⁵²⁹ but its already poor budget rank, twenty-ninth among law school libraries in 1973-1974, plummeted even lower in 1974-1975.⁵³⁰ For four years, the law library's book budget remained constant, despite rapid escalation in book production rates and costs.⁵³¹ There were significant periods of time during which new book purchases were altogether suspended due to exhaustion of budget resources. In one year, several subscription items (which comprise the bulk of the library's book budget) had to be cancelled.⁵³²

The effort to restore adequate funding to the law library began at the very beginning of Dean Auerbach's administration, for one of the conditions of his assumption of the deanship was that an increment of \$25,000 be added to the law school's 1972-1973 book budget.⁵³³ Yet, his early efforts met with little success. It was only through the assistance of private donations and internal reallocations of the law school's unassigned instructional funds that even more serious damage to the library was avoided.

In the law school's funding request for the 1977-1979 biennium, the law library was again a major priority.⁵³⁴ This time, happily, there was some success. In 1978, Law Library Director George Grossman could report that, "for the first time in five years, the budget for books and binding should be enough to cover the library's expenses."⁵³⁵ That budget, up from \$185,375 in 1976-1977 to \$230,402 in 1977-1978, was twice the acquisitions budget of just five years earlier.⁵³⁶ This, coupled with the fact that salaries of the law librarians

526. See Stein, *The Pirsig Years*, *supra* note 104, at 315 n.89; Stein, *The Fraser Years*, *supra* note 78, at 1163, 1174; Stein, *The Vance Years*, *supra* note 61, at 871.

527. Law School's Budget Proposals for 1975-77, *supra* note 457, at 31.

528. *Id.* at 30.

529. See *The Law Library*, in *THE TENTH ANNUAL REPORT TO THE PARTNERS IN EXCELLENCE*, 1977, at 30 (University of Minnesota Law Alumni Association 1978).

530. See Law School's Budget Request for 1977-79, *supra* note 517, at 26.

531. *Id.* at 28.

532. See Law School's Budget Proposals for 1975-77, *supra* note 457, at 33.

533. Auerbach Interviews, *supra* note 7.

534. See Law School's Budget Request for 1977-79, *supra* note 517, at 27.

535. Memorandum from Professor George S. Grossman to Law Faculty re: Law Library Colloquium on Feb. 28, 1978, at 30 (n.d.).

536. *Id.*

were also improved and that the library was freed from the strangulation suffered in Fraser Hall, made for a rather optimistic view of the library's future.⁵³⁷

Less successful were Dean Auerbach's efforts to expand the size of the law school faculty. This expansion and the resulting improved student-faculty ratio were at the core of the plan for legal education expressed in the 1967 Decades Ahead report. At the beginning, planning for the new law school building was based on a proposed student-faculty ratio of fifteen to one. This ratio assumed a school of sixty-six faculty members teaching a student body of one thousand.

With the law school housed in Fraser Hall, faculty expansion was impossible—there was simply no place to put more faculty members. Nor, given the overwhelming demand for legal education, could the student-faculty ratio be improved by reducing student enrollment.⁵³⁸ Finally, when the compromise between legislative and law school negotiators secured an agreement for a law school building that could accommodate forty-five faculty members and eight hundred students,⁵³⁹ progress seemed possible on the issue of faculty expansion. The law school, eager to break out of its stifling twenty-two to one student-faculty ratio and to accept more of its qualified applicant pool, presented a plan for increasing the faculty size by three members in 1975-1976 and four more in 1976-1977.⁵⁴⁰ Three positions were in fact funded, allowing the faculty to increase to thirty-five members in 1975.

In January 1976, Dean Auerbach, for the first time certain of the new building in the preparation of his budget, submitted a request that sought to add ten additional faculty over the next two biennia in order to achieve the building's full potential of forty-five faculty and eight hundred students by 1980-1981.⁵⁴¹ This request represented the fruition of the plans he had worked to achieve for so many years. But instead of expanding the University's faculty, the 1977 legislature cut 147 faculty positions in the University.⁵⁴² The law school was

537. *Id.* at 37. With the Library's move from the East to the West Bank of the Mississippi River, which cuts through the University of Minnesota's Minneapolis campus, it can now lay claim to being the second largest law school library west of the Mississippi.

538. Such a cut had been suggested and rejected by the faculty in 1973. See Stein, *The Lockhart Years*, *supra* note 19, at 598. Such a cut was also suggested in the Law School's budget proposals submitted in 1974 (before the planning funds for the new building were approved). See Law School's Budget Request for 1977-79, *supra* note 517, at 15.

539. See text accompanying note 359 *supra*.

540. See Law School's Budget Proposals for 1975-77, *supra* note 457, at 13.

541. See Law School's Budget Request for 1977-79, *supra* note 517 at 8.

542. See *Board of Visitors Spends Busy Day at Fraser Hall*, *supra* note 400, at 5.

fortunate to survive with its current faculty size intact.

In the fall of 1978, the requests for 1979-1981 were prepared. Again, Dean Auerbach sought to fulfill the promise of the building he had fought so long to secure by obtaining the resources necessary to increase the size of his faculty. Again, the University, facing severe fiscal restraints, informed him that it would not request additional faculty positions specifically for the law school in the upcoming legislative session.⁵⁴³

With this, the frustration of the now seven-year-long battle for more resources for the law school reached a climax. On December 1, 1978, Dean Auerbach submitted his letter of resignation, effective in June 1979. In part it read:

In early 1973, I undertook the Deanship primarily for two reasons. I believed I could be helpful in the effort then underway to secure a new Law School building and I was eager to implement the academic program for which the new building was planned.

The building is now a splendid reality. What has occasioned my resignation, however, is that the objectives for which it was sought now seem further than ever from being achieved.⁵⁴⁴

I. CONCLUSION

Dean Auerbach ended his administration in frustration over the fact that the resources necessary to implement the program of legal education he envisioned were not forthcoming. Yet, in the course of his administration much had been accomplished toward achieving the quality he sought. The new building, his highest priority, will magnificently serve the school for decades to come. So, too, will the superb library and excellent faculty he worked to preserve. Throughout his administration, Dean Auerbach steadfastly pursued the goals he had outlined in the *Decades Ahead* report. He left an institution better prepared for the continuing pursuit of excellence.⁵⁴⁵

543. The University did agree to ask for five faculty positions for the professional schools generally, some of which might have been allocated to the law school. This request was not funded by the legislature.

544. Letter from Dean Carl A. Auerbach to President C. Peter Magrath (Dec. 1, 1978) (on file with the Law School Building Papers, University of Minnesota Archives, Minneapolis, Minnesota).

545. During the 1979-1980 academic year, Dean Auerbach and his wife, Laura, are at Stanford University in California, at the Hoover Institution on War, Revolution and Peace. Dean Auerbach plans to return to the teaching of law at the University of Minnesota Law School in 1980.

Both of Dean Auerbach's children have followed their father into the legal profession. Linda Eugenie Auerbach, a graduate of George Washington Law School, practices in Los Angeles, and Eric Hart Auerbach, a graduate of the University of Pennsylvania Law School, practices in Philadelphia.

